Country Profiles Report

Southern Africa Disability Rights and Law School Project

Prepared by Hermien Kotzé

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FOREWORD

Louise Olivier,
Law Programme Manager, OSISA

In 2010 the Open Society Initiative for Southern Africa (OSISA) – in partnership with Open Society Foundations' Disability Rights Initiative and the Open Society Foundation for South Africa – undertook a research project into disability rights in nine countries in southern Africa. This was a new area of work for OSISA and, while we had quite a bit of anecdotal evidence about the state of disability in the countries where we work, we felt that we needed a more comprehensive understanding of the state of disability in the region. The research was undertaken over a period of eight months and the findings make for depressing reading.

OSISA's main objective was to have a comprehensive overview of the disability rights movement in southern Africa and to obtain detailed country specific research to enable us to assess where best we could provide on-going support. Therefore, two reports were commissioned – this compilation of the detailed country reports and a general overview. OSISA was also very interested in the provision of disability rights courses to law students in the region so the reports contain information that is specific to the work that universities were doing on disability rights. Unsurprisingly, the findings show that there was very little such work taking place.

People living with disabilities (PWD) are the most marginalised people in a region where life is already difficult for the majority of the population due to severe poverty, lack of development and high unemployment. In all countries, the rights of PWD are not given any priority by their governments. Usually, any ministry dealing with disability also has to address other marginalised groups such as women and children, so disability rights and the protection of PWD receive minimal state funding and focus. Most of the organisations and individuals interviewed during the research had to conduct their activities and advocacy work on an extremely tight budget – in most cases with little or no state support. In depth country interviews showed that the continued survival of disability rights organisations was one of their greatest challenges. Yet despite all the hardships

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faced by the disability community, remarkable work was taking place. These findings are highlighted in this publication.

Both reports include a variety of recommendations that would advance disability rights work in the specific countries and the region as a whole. OSISA regards this research as the first point of departure for on-going work in this field. Before embarking upon specific initiatives we needed to ensure that a situational scan provided us with sufficient information to enable us to appropriately identify areas for support and advocacy.

Indeed, OSISA has already responded to the findings in the research related to the work done on disability rights in universities in the region. This may seem like an anomaly to the reader but the organisations commissioning the research were particularly interested in offering a programme to law students on disability rights as part of their law degrees. Currently, and as a result of the research, a specialised disability rights law course is being offered in three universities in the region, Midlands State University in Zimbabwe, Eduardo Mondlane University in Mozambique and Chancellor College in Malawi.

The premise upon which we commenced this study is the knowledge that many PWD suffer some of the most profound human rights violations as a result of the denial of legal capacity, institutionalisation, and inadequate provision of community-based services and support. Only by ensuring their rights to (i) equal recognition before the law and legal capacity, (ii) equal access to the justice system, and (iii) live independently and be included in the community can these violations be addressed. While in some countries the disability movement is already taking on these issues – building on a developed rights discourse and a history of using legal tools and high-level advocacy to achieve results in this area – the challenge remains to ensure that these core priorities are relevant across the region, especially in places where the disability movement is not as developed and these rights have not been prioritised.

A first step towards this goal requires understanding that the patterns of exclusion may take other forms than the ones we recognise from working in other parts of the world. Identifying their manifestation in the African context is critical to devising an appropriate strategy for working there. For example, even where the legal system includes a formal institution of guardianship (which is not the case in all the countries in the region), our initial examination reveals that the most common form of denial of legal capacity occurs informally, unregulated by legal proceedings – for example by family members stepping in de facto for their family member with a disability.

Another example is how segregation within the community plays out. Institutions for PWD, and even psychiatric institutions, are much less common in Africa than in other regions where we work. However, against a backdrop of profound stigma and a dearth of social services in general, segregation takes the form of isolation within communities: non-attendance at school, lack of care and treatment, and absence from social and political life. In its extreme – but not uncommon – form, isolation may include being kept inside the house and even physical chaining. Institutions for ‘care’ of PWD may be few, but laws enabling imprisonment on the sole basis of not taking care of oneself turn prisons into a receptacle for people in need of support in their everyday lives.

Beyond the types of marginalising practices that take place in societies around the world and universally affect certain groups, it is important to identify context-specific practices and affected groups. In Africa, these may include women with disabilities, who are more acutely affected by impunity associated with sexual violence, and refugees and displaced people.

This study provides valuable information that OSISA and its OSF partners will utilise to support the protection and promotion of the rights of PWD in southern Africa.

CONTENTS

Select Glossary of Acronyms

ACNIDAH	Intersectoral Commission for Demining and Assistance to Victims (Angola)
ADD	Action on Development and Disability
ANCA	Angola National Association for the Nearsighted and the Blind
BCD	Botswana Council for the Disabled
CRPD	Convention for the Rights of Persons with Disabilities
DDP	Disability and Development Partners
DFID	Department for International Development (United Kingdom)
DHAT	Disability & HIV and AIDS Trust
DOLASED	Disabled Organisation for Legal Affairs and Socio-Economic Development
DPO	Disabled People's Organisation
FAMOD	Forum of Mozambican DPOs
FAPED	Angolan Federation of the Associations of People with Disabilities
FEDOMA	Federation of Disability Organisations in Malawi
FODSWA	Federation of Organisations of Disabled Persons in Swaziland
HI	Handicap International
ILO	International Labour Organisation
INGOs	International non-governmental organisations
ISTEG	Higher Institute of Economics and Management (Mozambique)
LARDEF	League for the (Re)integration of Disabled People (Angola)
LNFOD	Lesotho National Federation of Organisations of the Disabled
MANAD	Malawi National Association of the Deaf
MMAS	Ministry of Women and Social Action, Mozambique
MINARS	Ministry of Social Assistance and Reintegration, Angola
NACD	Namibian Association of Children with Disabilities
NFPDN	National Federation of People with Disabilities in Namibia
NASCOH	National Association of Societies for the Care of the Handicapped (Zimbabwe)
NGO	Non-governmental organisation
PEPDEL	Project on the Employability of Persons with Disabilities (ILO)
PWDs	People with disabilities
SAFOD	Southern African Federation of the Disabled
SAP	Structural Adjustment Programme
SINTEF	Stiftelson for Industriell og Tegnisk Forskning (independent Norwegian research company)
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
ZAFOD	Zambia Federation of Disability Organisations
ZAPD	Zambia Agency for Persons with Disabilities
ZAWD	Zambia Association for Women with Disabilities
ZPHCA	Zimbabwe Parents of Handicapped Children Association
WHO	World Health Organisation

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ANGOLA

Prepared by Hermien Kotze

"As long as the country is hungry, we can hardly talk about the situation of people with disabilities. This is the problem."

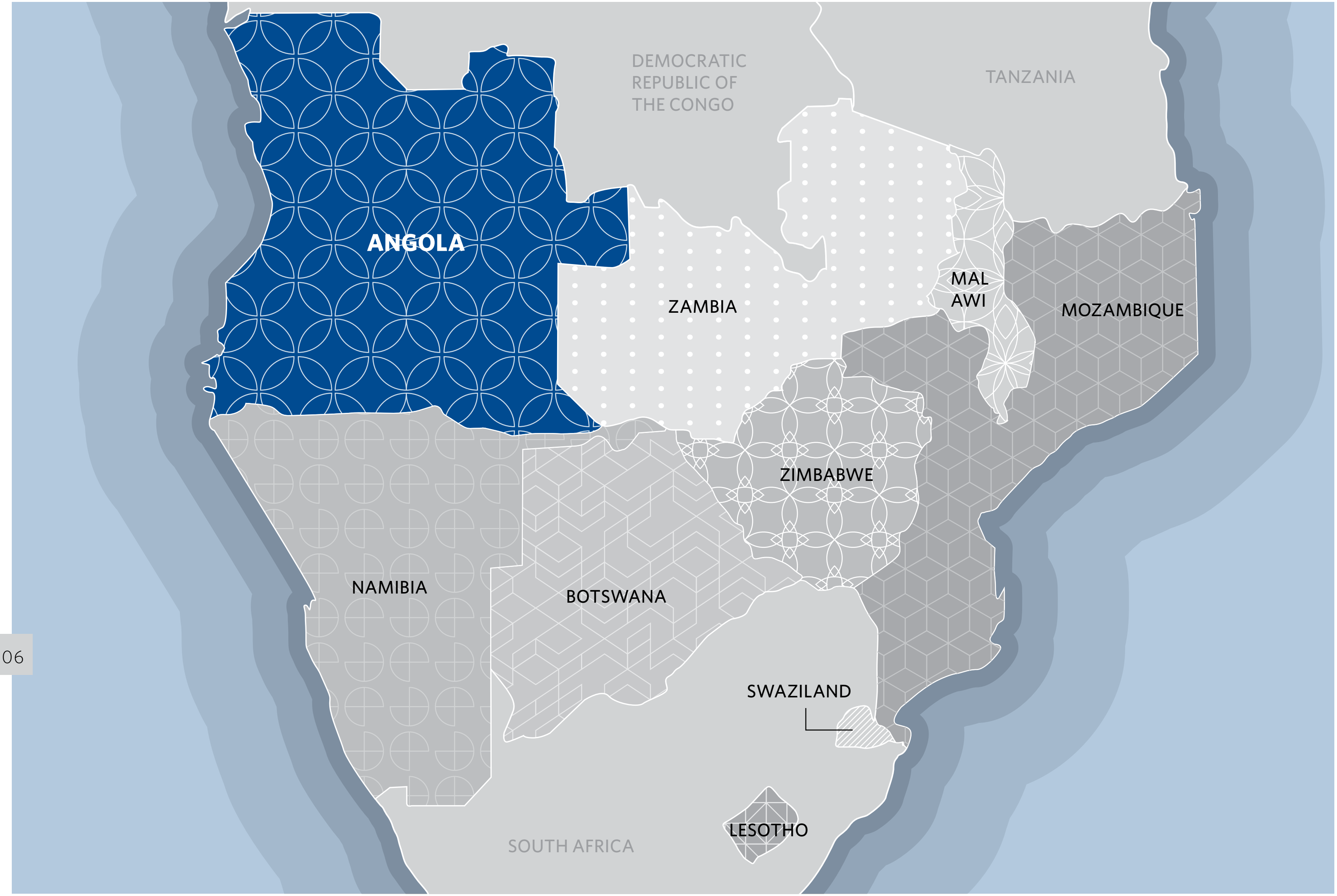
Benja Satula, Faculty of Law, Universidade Católica de Angola

General context

In the aftermath of a civil war that lasted almost three decades and ended only in February 2002, Angolan society remains seriously scarred, despite the efforts of the government to bring about reconciliation between people deeply divided by conflicting loyalties. The authorities also face the enormous and complex task of reconstruction, from building or salvaging physical infrastructure to re-establishing institutions and services to strengthening the economy. This context explains why, at present, 70 percent of the Angolan population continues to live in poverty[1] and to suffer from a 'lack of access to services at all levels'.[2] Many of these people live below subsistence level and in conditions of near-starvation. Both the government and human rights activists tend to give higher priority to 'empty stomachs' than to the fate of people with disabilities (PWDs), even though the majority of them belong to the ranks of the most deprived.

Any discussion of disability rights must also take into account the slow progress of the country towards democratisation, which is being managed by a government that has been in power since 1975. Although its observance of human rights has been poor in the past,[3] the Angolan administration is attempting to create a culture in which human rights are intrinsic. This is obviously not something that can be achieved overnight, especially in a country with a long history of violent conflict. It requires a completely new approach and the active involvement of a civil society that is still 'emerging',[4] as one of the respondents to the research interviews termed it. The remaking of the national mind-set applies to the government as well. For example, democratic practice demands that the authorities account for their actions:[5]

> *Never in the history of Angola has the government been made to be accountable for some act of violation of the rights of citizens. There is no existing legal culture for people to hold*


DEMOCRATIC
REPUBLIC OF
THE CONGO
TANZANIA
ANGOLA
ZAMBIA
MAL
AWI
MOZAMBIQUE
ZIMBABWE
NAMIBIA
BOTSWANA
SWAZILAND
LESOTHO
SOUTH AFRICA

government or any other entity accountable to ensure that a right is fulfilled.

Angola adopted a new constitution in early 2010. This sets out the basis of the new dispensation that will institutionalise democratic governance at all levels of society and provide legal parameters that will support a more fully-realised human rights culture. The new constitution mentions PWDs specifically in its general anti-discrimination clauses and also contains detailed provisions for the protection and rights of PWDs (described in the legal review below). However, although parts of various laws and decrees that have since been published deal with the disabled, no piece of legislation or national policy currently focuses solely on disability. Although a Baseline Law on Social Protection that addresses disability issues in detail is envisaged in the constitution and already exists in draft, it has been pending for ten years. Angola has signed the United Nations Convention on the Rights of Persons with Disabilities (CRPD), but has not yet ratified it. The researchers were also unable to find any confirmed reports of strategic litigation based on disability rights that had taken place in the country.

The discrepancy between Angola's formal commitments, both internationally and domestically, to respecting the rights of disabled persons and the actual steps it has made towards fulfilling these undertakings is very great, even though the country has a substantial population of PWDs, among them an estimated 80,000 victims of landmines.[6] As no census has been taken in the country since the 1970s, the number of PWDs is unknown. The Ministry of Social Assistance and Reintegration (MINARS) sets the figure at 170,000,[7] while the League for the Support of the Disabled (LARDEF)[8] claims it is 1.2 million.

In Angola, civil society organisations (CSOs) – or 'associations' as they are broadly termed in the country – started to emerge only in the 1990s. Initially they focused on immediate crises such as war-induced food shortages rather than human rights per se.[9] Their involvement in human rights issues and other rights-based discourses appears to have begun and grown exponentially during the ensuing decades. The interviewees made many references to the need for a broader human rights movement within which to advance disability rights. This would include closer co-operation between those organisations dedicated to the interests of disabled people (DPOs) and national and international human rights institutions. Many of the people consulted during the interviews stated emphatically that 'the integration of people with disabilities is not a situation of charity, but one of human rights'.[10] Ivo de Jesus of LARDEF, lamenting the generally low educational levels of most of the people involved with DPOs, stressed the need for staff members who were better-educated and more capable of engaging and influencing powerful members of society, who would assist them to promote and defend disability rights: [11]

They (DPOs) should work to have alliances and mobilise the so-called opinion makers, because if there is no interaction between the mass media and human rights' defenders and if a human rights front is not created, where the rights of people with disabilities can be defended, it will be very difficult.

Of all the southern African countries in which the research was conducted, Angola was exceptional in that its disability activists showed the keenest awareness of the need for full integration of the rights of PWDs into all mainstream discourses and practices. This would include political processes and policy design, legislative reviews and reforms, and socio-economic planning. The latter would entail the provision of access to services (especially education, vocational training, health and physical rehabilitation centres), job opportunities and cultural activities. This recognition of the importance of making the interests of the disabled integral to all planning, rather than a separate issue, was underlined by Nsimba Paxe of the Intersectoral Commission for Demining and Assistance to Victims (ACNIDAH), a government body: [12]

With respect to difficulties, or not, of people with disabilities to organise themselves in Angola, I do not like these procedures and strategies that create islands. The idea appears to me to be that we create islands as though we were a village of people with disabilities. This should not be so.

“The Angolan interviewees identified improved access to education and vocational training as the most important of the supportive interventions government could make to improve the lot of PWDs.”

Another disadvantage of the conventional practice of regarding DPOs as ‘islands’ is that PWDs and the organisations that represent them are expected to undertake all the work of advocacy and awareness-raising unaided.

There appears to be a very clear understanding amongst disability activists in Angola that although equal rights for disabled people in terms of the constitution are central, these rights are insufficient unless PWDs are helped to exercise them. The disabled need a range of practical support measures that will help them to overcome the many barriers they face on a daily basis. Only then can they claim their rightful place in society and the economy. Adequate support should include (at minimum) mandatory improvements in the physical accessibility of all public buildings and public transport; an increased number of conveniently-situated orthopaedic centres to cater for the needs of landmine victims;[13] greater provision for specialised education; better employment opportunities; and, an improved range of health services and facilities. Nsimba Paxe of ACNIDAH acknowledged the government’s responsibility to make these interventions, saying “our duty is to provide all the resources necessary for these people to be integrated and useful in society.”[14]

Most respondents concurred that concrete measures such as those described above are necessary to address the active discrimination that most PWDs continue to experience. If the constitutional provisions and anti-discriminatory legislation proposed by the government are to create a more balanced perspective and advance the rights of PWDs, these undertakings must be implemented in practical terms, and sufficient resources allocated to initiate and sustain these supportive measures. This is clearly the challenge that is faced by governments across southern Africa: the question of how to proceed from disability rights on paper, to disability rights in reality.

Paulo Kalesse of the National Children’s Institute (INAC) mentioned the need to augment the government’s efforts by inculcating a broader acceptance of the equal status and rights of PWDs in society at large: [15]

> *People with disabilities in our country have the same economic, social and cultural rights as people who are not disabled. In practice, though, it is different because they do not have their rights guaranteed, not only because of lack of legislation, but because of lack of awareness of the entire society that tends to think that people with disabilities do not have value and dignity and thus do not deserve due attention.*

The Angolan interviewees identified improved access to education and vocational training as the most important of the supportive interventions government could make to improve the lot of PWDs. (Respondents in the other countries agreed.) There are many positive multiplier effects the individual can derive from a good education, among them improved self-esteem and confidence, both of which were often reported to be in short supply amongst PWDs in Angola. Probably the most salient benefit is that education offers a greater chance of employment, which in turn brings economic independence. All of the above enable PWDs to move beyond the social stereotypes to become full members of society.

When the researchers changed the focus from the personal to the socio-political during the interviews, many respondents suggested that intellectual development not only confers competence on the individual PWD, but adds greater weight to the disability movement in general. Better-qualified people could contribute significantly to the work of DPOs by making it possible for these organisations to obtain up-to-date information, conduct sophisticated advocacy and lobbying campaigns, and participate in policy forums, legislative reviews and monitoring activities At present, the extremely low levels of education of most PWDs act as a serious obstacle to the advancement of disability rights and issues in Angola. Ivo de Jesus of LARDEF described some of the difficulties DPOs in Angola face: [16]

They are the poorest people and without capacity to train themselves to carry out activities that they desire. In order to work on human rights, there is a need to have specialisation and knowledge and participate in training sessions. So I think the major challenge is the lack of training.

Currently, PWDs continue to be categorised by society at large in negative and dismissive terms. Filipe Faria, President of the National Association for the Nearsighted and the Blind (ANCA), stressed the role education can play to transform this mind-set:[17]

[i]n my opinion, the academic education of people with disabilities, irrespective of the type [of disability], is the way forward for their rights to be adequately taken into account and in order for them to participate. Education is important as one of the steps to be taken, so that people with disabilities can become true defenders of their own rights and can do so effectively, [including] proposing to the State what they need.

At the time of writing, the Ministry of Education was responsible for about 37,000 children with special education needs. Those children most in need of specialised assistance are sent to seven designated schools, while the rest are integrated into mainstream institutions.[18] However, according to Manuel Santada of Norwegian People's Aid (NPA), the public schooling system is generally 'ill-prepared and ill-equipped for such tasks'.[19] In other words, it appears that ordinary teachers are ignorant of the difficulties disabled children face and do little to incorporate these pupils into either the academic or the social context of the school. Although the researchers were unable to glean any details on how the integration of children with disabilities into mainstream schools was proceeding, the process seems to be fraught with difficulties. António Eduardo of the Instituto João Paulo II (which trains social workers) suggested a means by which social barriers could be broken down and the advantages of integration experienced by abled and disabled children alike:[20]

The conduct of common activities between students with disabilities and those without disabilities will also enable interaction between them and help to reduce stigma and discrimination.

The Angolan government has established a Special Education Institute, which was mentioned by a number of the respondents. However, little detail could be obtained on its activities, and no indication was given as to the actual (or estimated) percentage of all children with disabilities that the Ministry of Education's figure of 37,000 represents. In general, statistics appear to be unobtainable in Angola, so the researchers were unable to ascertain either the numbers involved or the trends. All that could be gleaned from interviews with two senior academics in university law schools – one from the *Universidade Católica de Angola* and the other from the *Universidade Agostinho Neto* – when asked about the number of PWDs that attend tertiary education institutions, was the general response that their universities have 'a lot of disabled students'.[21]

Government interventions and responsibilities

The appeal for the respect and integration of PWDs is visible and notable in the discourse of politicians.

The follow-up of the implementation of the ideas of politicians is not very visible.

(Manuel Santada, NPA) [22]

It appears that the government of Angola is involved in the area of disability on a number of different fronts. However, more intensive research is required to establish exactly what material progress has been made towards assisting PWDs. The Ministry for Social Assistance and Reintegration (MINARS) is the government department most involved in projects dedicated to the disabled. Various other departments have responsibility for offering specific services to PWDs: the Department of Education undertakes the education of children with disabilities (as indicated above); the Ministry of Public Administration, Employment and Social Security (MAPESS) provides vocational training for PWDs; the Department of Health manages physical rehabilitation and the supply and fitting of prostheses; and, ACNIDAH is charged with assisting landmine victims.[23]

Although, as previously noted, the interviews provided very little hard information, the government has given priority to ex-combatants who became disabled during the fighting. While these former soldiers receive pensions from the state, the same does not apply to civilians who lost limbs in landmine explosions during the war. Therefore, distinctions tend be made between the 'war disabled' and the 'ordinary disabled'. For example the former are entitled to free prostheses, wheelchairs and physical rehabilitation (see below).[24]

The general impression gained by the researchers was that while the Angolan government was initiating a number of laudable attempts to realise the rights of PWDs, very few have been put into actual practice. As is the case in most other countries in southern Africa, interviewees constantly mentioned the enormous gap between government undertakings and concrete implementation measures. André Nkula of MINARS said, "We have many approved legal instruments that defend the rights of people living with disabilities, but their practical implementation is not visible and we must think a little bit more on this."[25]

Among the criticisms of the government's shortcomings cited by respondents from the private sector was the fact that there is no single and coherent government policy that deals with disability issues and rights. The relevant legislation (the Baseline Law on Social Protection) has been pending for 10 years, and the project team was unable to determine whether (or to what degree) the proposed legislation was aligned with the guidelines and provisions of the Convention. Government activities centred on disability are uncoordinated; there are very few targeted policies and programmes and little sociological or technical expertise has been brought to bear on these interventions. Some interviewees expressed the belief that the government's approach to PWDs and their rights remained largely paternalistic and assistance-focused, and that it was reluctant to create conditions that would enable PWDs to organise themselves.

Landmine victims and physical rehabilitation

As a result of the large number of people who became disabled as a direct or indirect result of the war, the Angolan government and many of the NGOs and DPOs active in the country understandably place a great deal of emphasis on physical rehabilitation. According to Manuel Santada of NPA, most of the existing physical rehabilitation centres in the country came about through the initiative of NGOs that had financial backing from international donors, but received technical and institutional support from the Ministry of Health.[26] These centres have made an enormous contribution to mitigating the damage to the lives of people who lost limbs to landmines or accidents by making various physical regimes, limb replacements and technical aids like wheelchairs available to them. However, interviewees reported that there are currently not enough orthopaedic centres in the country and that some have closed and/or run out of medical and other materials because the international organisations that previously supplied them have left the country. This makes it difficult for many people who need prostheses and other kinds of devices to obtain help. Nsimba Paxe of ACNIDAH provided a description of the practical difficulties encountered by people seeking such services: [27]

For a person that lives in a province like Moxico to get a prosthesis, he [or she] must leave for Kwanza Sul from Moxico. Thus, he [or she] has food, transportation, accommodation and other costs. Where the rehabilitation centre does not have resources to attend to these people the situation becomes more complex. The centre may have material to make the prostheses, but may not be able to provide accommodation and transport from the provinces to Kwanza Sul. People therefore have limited access to these all-important services for their integration into society.

Although no direct mention was made of the psychological after-effects of the war, some of those interviewed expressed concern about the inadequacy of arrangements that concentrated solely on physical rehabilitation. Manuel Santada of NPA advocated the need for 'psycho-social follow-up',[28] which would assist the social reintegration of people disabled, whether mentally or physically, by the conflict. However, speaking of PWDs in general, he also recommended initiatives that promoted the self-esteem of PWDs, which would enable them to engage 'in social life without fear or limitations'.[29] The most important of these was education. '[T]he high number of PWDs without academic education or proper vocational training has made the process of social and vocational integration of PWDs very difficult.'[30]

The conditions in which PWDs live in Angola

In Angola, as in all the countries of southern Africa, PWDs are among the poorest and most vulnerable members of society. What differentiates their situation is that they live in a war-ravaged country, where the struggle for survival affects 70 percent of the population. According to the respondents, most PWDs are cared for by their relatives, and subjected to discriminatory treatment based on the popular perception that disability is shameful. This prejudice is common both within the family and the wider community. As indicated in much greater detail in the situational analysis, PWDs usually lack access to a wide range of services that, if provided, could improve their living conditions and offer them opportunities to realise their rights to a normal social life. Because this assistance is not forthcoming, PWDs have to endure an extremely restricted and dependent existence, with very few opportunities for self-improvement. Perhaps as a result, even the interviewees, many of whom work in the disability movement, appeared to associate PWDs with begging, whether in the literal sense or in relation to pleading with the government to do certain things for them. When asked about the visibility (that is, the prominence in the minds of the public) of disability issues in Angola, Ivo de Jesus of LARDEF responded as follows: [31]

There is no visibility on issues related to PWDs. To increase visibility, there is a need for people to understand that PWDs have rights, because the

“What differentiates their situation is that they live in a war-ravaged country, where the struggle for survival affects 70 percent of the population.”

“a woman with disability is seen as a person that does not have rights in the family and as such she is exposed to all forms of danger and humiliation.”

visibility that they have is from the angle of begging. It is always from a paternalistic point of view...from the point of view of a poor fellow that needs alms. There is therefore a need to change this mentality that society has towards PWDs. PWDs should be placed in their rightful place, in the place of citizens. PWDs here are treated as second-class citizens and everything that is done for them is as though it was a favour and this should not be so.

Although some respondents were of the opinion that public awareness of PWDs and their rights has increased owing to the efforts of high-profile DPOs like LARDEF, this appears to be an improvement from a very low base. Some of the interviewees also said that the achievements of disabled athletes from Angola in international sporting events, as a result of the laudable work done by the Angolan Paralympics Committee, had done much to bring PWDs to national attention. However, overall, the populace has little awareness of, or concern for, PWDs, partly because of lingering stigma and partly because the country contains so many people in need that there are many other demands on the public conscience.

Again, as discussed at some length in the report on the general situation of PWDs in all nine countries, the position of women with disabilities is a serious cause for concern in Angola. A particular theme that emerged from the interviews was their acute vulnerability to HIV and AIDS. Although representatives of LARDEF were aware of the connection between this disease and disability (for reasons set out in the main report), most of the other interviewees were either ignorant that there was such a connection or refused to discuss the topic. The reluctance to consider or discuss questions relating to a link between disability and AIDS is evident from the following responses: a person working for a DPO answered, ‘[l]et’s just say that it does not exist’; and, an official from a government department fobbed off the question, saying ‘HIV and AIDS are just treated normally’[32]

Ivo de Jesus of LARDEF provided a shocking insight into the mind-set of the public and the victimisation of women who cannot defend themselves and are treated with contempt by those who should be their protectors:[33]

We still have cases where a woman with disability is seen as a person that does not have rights in the family and as such she is exposed to all forms of danger and humiliation. This means that she is more exposed to HIV and AIDS infection. If by chance a man comes along that likes her and she also likes him, the family of the man will oppose the relationship and if, peradventure, she is impregnated by someone, she cannot, or worse still, does not have the right to complain because the family considers that the man did her a favour.

DPOs and CSOs in Angola

DPOs in Angola have been doing a great job and they deserve very special commendation. This is because it has not been easy to advocate for the rights of PWDs in a society that is awash with diverse political, economic, social and cultural issues.

(Manuel Santada, NPA)[34]

The DPOs in Angola appear to be doing sterling work. Most of the gains made in promoting the interests of the disabled can be attributed to them, even though they face the same constraints as those that hamper most of the other DPOs in the region. These have been mentioned before, but to summarise, many of their leaders and office-bearers do not have the intellectual training or the organisational ability to make their efforts effective, raise funding, keep abreast of relevant information, lobby the government or maintain contact with other DPOs in the region. This shortage of experienced staff members is accompanied by a dearth of sponsors. During the field interviews the researchers were unable to obtain detailed information, either on the sources of most DPO funding or on their budgets. All that could be elicited was that in some cases the government provides some financial support, while in others, foreign donor institutions contribute funds. Dependency on the latter 'makes their actions unsustainable',[35] according to Manuel Santada of NPA, because external sources may withdraw their support at any time, and therefore cannot be relied upon.

Organisations and institutions represented in the interviews

DPOs

- Federation of Organisations of Disabled People in Angola (FAPED) – the umbrella body for DPOs[36]
- Association of War-Disabled Ex-Servicemen of Angola (AMMIGA)
- National Children's Institute (INAC)
- National Association for the Nearsighted and the Blind (ANCA)
- League for the Support of the Disabled (LARDEF)
- Institute John Paul II.

Government and aid organisations

- Ministry of Social Assistance and Reintegration (MINARS)
- National Intersectoral Commission of Demining and Humanitarian Assistance (ACNIDAH)
- Norwegian People's Aid (NPA).[37]

Law Schools

- Faculty of Law, *Universidade Católica de Angola*
- Faculty of Law, *Universidade Agostinho Neto.*

The introduction of a course on disability rights to Angolan law schools

Professor Benja Satula and Dr André Victor, of the Faculties of Law at the *Universidade Católica de Angola* and the *Universidade Agostinho Neto* respectively, were interviewed and asked to comment on the idea of a course in disability rights to be offered at their institutions. Both expressed doubt that a course lasting an entire year would be acceptable, or even feasible, in their own schools of law. They believed that it would only be viable only as part of their existing or proposed syllabi. Professor Satula, who had already discussed the matter with members of OSISA's office in Angola, suggested that a module on disability rights lasting a semester could be included in the course on fundamental rights that was being developed for final-year students in the *Universidade Católica de Angola* law school. Dr Victor, on the other hand, had not heard of this initiative before the interview and doubted whether his university would entertain the idea of such a course at this stage. Both warned the researchers that even if the principle of a course in disability rights were to be agreed by the law schools, the time interval between proposing and receiving permission to offer a new course was usually about a year and a half.

The interviewees were also asked to describe the teaching methods and technical aids used in the two law schools they represented. Both law faculties used a combination of teaching methods, ranging from the more conventional lectures and tutorials to use of the Socratic Method, which involves learning through dialogue. Professor Satula reported that the law faculty of the *Universidade Católica de Angola* was considering the merits of a greater reliance on advanced information technology in the future.

Both respondents were asked more general questions about what arrangements the two universities made to accommodate the special needs of disabled students. Although they were unable to say whether the two universities had formal policies on the subject of disability, both academics reported that there were 'a lot of disabled students' on campus. They also asserted that the two universities had responded to the needs of disabled students by making adaptations to infrastructure that would allow students with physical impairment comfortable access to, and between, buildings. The *Universidade Agostinho Neto* also provided a room set aside for the use of students with disabilities. This area contains a range of study aids and materials geared to special requirements, particularly those of blind or partially-sighted students.

Both respondents said that they were not aware of any cases of strategic litigation on the rights of PWDs that had been brought before Angolan courts.

Legal Review

Prepared by Maria Lúcia de Silveira, in-country researcher in Angola

The framework of this review is provided by the human rights clauses of the new Angolan constitution, which are described below. This is followed by a selective account of current legislation that is intended to give content and force to those principles, and various Acts and decrees pertaining to the rights of PWDs.

The new Angolan constitution that was adopted in March 2010 has made great advances in respect of the protection of the rights of, and fundamental guarantees to, its citizens.

The rights of disabled people as acknowledged in the new constitution

In the chapter on Fundamental Rights and Duties, the constitution recognises the right of all citizens to be equal before the law (Article 23).

Article 83, entitled 'citizens living with disability', sets out concrete and clear protection measures to ensure and promote the rights of PWDs in general, which should inform the strategies and policies adopted by the state.

Article 84, on the other hand, confers a special category of protection on war veterans who became disabled during active military service, their spouses and those of their children who are minors.

People with disabilities are also expressly included in Article 77, which deals with broad social rights:

> *The state guarantees and promotes necessary measures to secure that all the rights to medical assistance as well as the right to child care – in maternity, incapability, disability, elders and in each situation of incapacity – work in terms of the law.*

The previous Angolan constitution of 1992 contained only one clause (Article 48) concerning the rights of PWDs. This related to the protection of ex-combatants who were disabled, physically or psychologically, in the national liberation struggle.[38] In the opinion of most legal analysts, this article was not broad enough to cover the needs of other people with disabilities. It also failed to declare unambiguously that the duty of protection belongs to the state.

International conventions on the rights of the disabled

Both the 1992 and the 2010 constitutions follow monism, the assumption that national and international law are one. This means that the individual state is as much bound by any international treaty or convention to which it is party as it is by its domestic legislation. However, the government of Angola has signed but not yet ratified both the UN Convention on the Rights of Persons with Disabilities and the UN's International Labour Organisation Convention on Labour Rights for Persons with Disabilities.

Overview of current legislation on the issue of disability in Angola

The legal system of Angola is influenced by the Roman-Germanic tradition and is very similar to that of Portugal. The Constitution of the Republic of Angola forms the apex of the country's legislative pyramid, followed in descending order of importance by international laws, and then the country's own executive decrees and other juridical and legal instruments.

At present, despite the provisions enshrined in the constitution, no laws that cover the rights of all people with disabilities have been enacted.

Act 6/98 of 7 August 1998 on disability allowances concerns grants made by the government to citizens who are prevented from doing any form of work by disability or other forms of permanent incapacitation. Other conditions are that the PWDs concerned are not the beneficiaries of any other social assistance regime, and do not have private sources of funding.

The Former Combatants and War Disabled Persons Act, Act 23/2002 of 16 September 2002, is not inclusive because it was drafted under the purview of Article 48 of the previous constitution.[39] This is also the case with the general labour law, which needs to be amended to conform with Article 83 of the new constitution, since the Labour Law does not currently specify the right to work of PWDs. An example of this lack of clarity can be found in no.4 of Article 290, which once again mentions the duty of the state to promote and support the integration of those PWDs whose disabilities are attributable to acts of war.

The Baseline Law on Social Protection, Act 7/04 of 15 October 2004, gives guidance on the norms that should govern national policies on the protection of vulnerable groups. Article 4 of this law (paragraphs b, c and d) describes the objective of basic social protection, which is to improve the wellbeing of individuals, families and communities by guaranteeing all citizens a minimum means of livelihood. This is to be achieved through assistance to people and families in especially difficult circumstances, whether due to unpredictable circumstances or any other causes beyond their control. By fostering social development, these actions will gradually reduce the incidence of inequality, poverty, social dysfunctionality and marginalisation in the populace. The vulnerable groups requiring special protection of this kind are described in Article 5 (paragraphs a, b, c, d, and f) as those who are unable to manage without assistance. These include individuals or families living in extreme poverty; women disadvantaged by their situation; children and adolescents with special needs or at risk; the aged in situations of physical or economic dependence and isolation; persons with disability who are at risk or socially excluded; and, the unemployed. Article 43 (point 1, 2, paragraphs a, b, c) sets out the type of integrated and articulated attention that these vulnerable groups should receive through the National Social Protection Council, which is a consultative and collaborative organ comprising representatives of government, partner organisations and other entities active in social protection. The Council's duties are to inform public bodies on issues related to social protection; to monitor the functioning of social protection projects (and to make recommendations for their improvement); and, to prepare reports and accounts to enable the government to make periodic assessments of the state of social protection, including details on income, expenses, sources and the modes of intervention used.

Articles 127 and 128 of Act no 6/05 of the Electoral Law of 2005 refer to the right of PWDs to vote.

Article 16 of Act no 1/06, the Baseline Law on First Employment of 18 January 2006, provides for the participation of people with disabilities in the drafting of legislation and policies on work that is specifically adapted to the capacities of the disabled person concerned. This participation of PWDs is particularly important to create partnerships of mutual interest between them and the public and private sectors. Paragraph d of the Article reiterates that people with disabilities are beneficiaries of rights provided by law. It also offers fiscal and customs incentives to companies that promote jobs for the disabled. These incentives apply particularly to the costs of importing vehicles, wheelchairs and other technical means of assisting PWDs to work.

> *"a Baseline Law on People with Disabilities has been under discussion before the Council of Ministers (the Executive) for 10 years."*

Draft laws and decrees

As referred to above, a Baseline Law on People with Disabilities has been under discussion before the Council of Ministers (the Executive) for 10 years. Although legal analysts expect it will be approved, there is no way to determine when the process will reach its conclusion.

Decree no 56/79 of 19 October 1979, which implements arrangements for special education, is a legal instrument to ensure that suitable teaching is provided for children and young people with special needs (requiring instruction that is better adapted to their particular difficulties than ordinary schools can provide).

Decree no 85/81 of 16 October 1981 relates to former combatants who were war-disabled by injuries or illnesses incurred during combat or active service. The special rights conferred by this decree also apply to the families of combatants who died in active service, and to all veterans, regardless of the nature of their incapacity, whether it is physical, mental or age-related.

Decree no 86/81 of 16 October 1981 sets out a medical index that ranks different degrees of disability in order of severity. This decree was issued to establish the amounts to be paid as monthly pensions to former combatants with a disability rating equal to, or above, 30 percent. The size of the pension is calculated on two criteria, the degree of disability and the normal salary applicable to that person in his former occupation. An ex-combatant with 100 percent disability receives a pension equivalent to 100 percent of his salary (Group I) and one with a rating of between 95–80 percent is allotted a sum equivalent to 75 percent (Group II). Group III covers veterans rated between 75–50 percent disabled who are awarded 50 percent and Group IV those at the 45–30 percent level to whom a grant of 25 percent of their salaries is disbursed.

Decree no 21/82 of 22 April 1982 declares that 2 percent of job vacancies in both the public and private sectors should be reserved for people with disabilities. Under the framework provided by the decree, employers, whether from state institutions or private businesses, are instructed to absorb people with disabilities into their staff complements. They are also expected to create working conditions that accommodate the requirements of their particular disabilities and comply with the norms of hygiene and safety.

Decree no 6-E/91 of 9 March 1991 establishes the National Rehabilitation Institute (INR), a government organ responsible for the development of a national policy of rehabilitation for people with disabilities. Its duties include planning, coordinating and controlling all projects relating to rehabilitation. The Institute, which works under the oversight of the Head of State, is presided over by a president, assisted by a vice-president.

Article 9 of Decree no 58/05, published in 2005, deals with electoral law regulation. It guarantees the right to vote of those members of the electorate who are disabled, stating that when voting in legislative council and presidential elections, visually impaired or otherwise disabled voters may be assisted by another voter of their choice (Article 125).

Although references to the rights of the disabled occur in various legal instruments in force in Angola at present, most of them have little material effect on the lives of PWDs in general. Those that do offer some relief to disabled people are restricted to designated groups, such as former combatants. Legal analysts hope that the more enlightened approach to disability rights found in the new constitution, supported by the enactment of the Baseline Law on Disabled Persons, will help to bridge this gap.

2.

BOTSWANA

Prepared by Bonolo Dinokopila, in-country researcher with additions by Hermien Kotze

> *“the rights of the disabled take a back seat when the government considers matters to do with rights.”*

Introduction

On 13 December 2006, the long-awaited Convention for the Rights of Persons with disabilities (CRPD) was adopted by the United Nations in New York.[40] The CRPD represents a significant step forward for disability rights, because – in acknowledging that persons living with disability are also entitled to the rights available to others – it raises hopes that the lot of PWDs the world over will be improved. Currently, their rights are persistently and systematically violated.[41] The CRPD sets out an international standard for the treatment of PWDs and adds substantial value by clarifying the way in which certain rights should apply to such persons, and how they are to be guaranteed.

As will become apparent in this chapter, very little, if any, attention has been paid to matters concerning PWDs in Botswana. The reason is that (as in other countries) the rights of the disabled take a back seat when the government considers matters to do with rights. Although the country has various policies that address issues relating to the treatment of people with disabilities, these are far less wide-ranging and carry fewer benefits than the equivalent services provided for their non-disabled counterparts.[42] For example, the right to housing of PWDs has yet to be addressed.[43] This discrepancy between the arrangements made for the ordinary public and PWDs extends to Botswana’s laws, systems and institutions.

This chapter evaluates Botswana’s policy and legal framework insofar as the rights of PWDs are concerned. Article 4(1)(b) of the CRPD obliges states ‘to take appropriate measures, including legislation, to modify or abolish laws, regulations, customs and practices that constitute discrimination against persons with disabilities’. Although Botswana has not signed or ratified the CRPD, and therefore has no technical obligation to comply with it, the researchers believe that a review of the country’s formal provisions for PWDs will make it possible for analysts to determine the extent to which these domestic measures are consistent with those contained in the international convention.


DEMOCRATIC REPUBLIC OF THE CONGO
TANZANIA
ANGOLA
ZAMBIA
MALAWI
MOZAMBIQUE
ZIMBABWE
NAMIBIA
BOTSWANA
SWAZILAND
LESOTHO
SOUTH AFRICA

> *"discrimination against PWDs continues, especially when it comes to equality of opportunity."*

Botswana's policies relating to the care of PWDs

Writing about the situation in Malawi, Victor Jere pointed out that, while its constitution guarantees the right to equality and non-discrimination to all, these rights are not enjoyed by PWDs in practice. The same applies in Botswana, which is unusual in that it has no legislation specific to persons with disabilities, despite the provisions of its constitution. In effect, this means that discrimination against PWDs continues, especially when it comes to equality of opportunity. Even the constitution does not make reference to their socio-economic rights, so in the absence of a law that establishes these for PWDs, the latter are unprotected.

In 1996 the government of Botswana issued a multi-sectoral National Policy on Care for Disabled Persons, which was described as 'the national response to the demand for a coordinated delivery of service and care for people with disabilities in Botswana'.[44] According to Sekgabo Ramsay, the Executive Secretary of the Botswana Council for the Disabled (BCD), its purpose was to lay down guidelines that would apply to all parties involved in dealing with disability issues, including the relevant government ministries, for example Education, Health, Local Government, Public Works, Transport, Labour and Land. However, she reported that in practice the policies were implemented by the Ministries of Education, Health and Local Government but were ignored by all the other parties.[45]

The key objectives of the multi-sectoral National Policy are to:

- recognise and protect the human rights and dignity of every individual;
- acknowledge that participation in the basic structures of society (the family, social group and community) is crucial to a human being's welfare; and,
- create a self-sufficient society by providing an environment within which all people, including those with disabilities, can develop their abilities to the fullest possible extent.

The policy is woefully inadequate in that, as it does not have the force of law, failures to apply it cannot be challenged in court. Although it refers to the need for the integration of PWDs into society, it only does so in vague terms. Perhaps its most notable shortcoming is that this policy does not include the provision of reasonable accommodation and greater access to public facilities and transport for disabled people. This is discriminatory practice in terms of Article 2 of the Convention.

The researchers found that the 1996 policy is currently under review, and is soon to be replaced by a new draft. The review, which was coordinated by the Department of Health, was carried out by a consultant who was asked to suggest changes to the policy that would align its provisions more closely with those of the CRPD. The revisions would form the basis of a new law.[46] According to representatives of civil society who took part in the interviews, the policy review process was inclusive, as members of the disability movement were among those consulted. The respondents who represented DPOs expressed the belief that the new, more comprehensive draft policy heralds a new era for disabled people in Botswana.

From a study of the Draft Reviewed Policy, the researchers ascertained that it is largely based on the Convention, as it includes references to issues of accessibility, reasonable accommodation and inclusiveness. If this draft becomes the Botswana National Policy on the Promotion and Protection of the Rights and Respect for the Dignity of Persons with Disabilities, it will set out the country's long-term plan 'towards a socially inclusive society that recognises the rights and human dignity of PWDs to realise their full potential and lead a satisfying life'.[47] The section on Strategic Directions (which guides policy implementation) provides for, and recognises, the rights of PWDs to life, non-discrimination, equality before the law, respect for their privacy, and freedom from torture and cruel, inhumane or degrading treatment.

The Botswana Policy on Inclusive Education is one of the few concessions made by the government to the needs and rights of PWDs.

None of the interviewees knew of any strategic litigation on issues pertaining to the rights of PWDs that had been brought before the courts in Botswana, or was pending.

Government initiatives and responsibilities

Shortly after Botswana gained independence on 30 September 1966, its government began to assess the need to help people with disabilities. As a first step, the government commissioned a study in the early 1970s on the different disabilities that were prevalent in the country. The Ministry of Health, acting on the findings, introduced a Special Services Unit for the Handicapped (SSUH) in 1975. The SSUH has now been transformed into the Rehabilitation Services Division of the Ministry of Health.[48]

The Ministry of Education introduced special education concepts when it formulated its education policy in 1977. Since then a Special Education Division has been set up in the Ministry to plan and oversee schooling for people with special needs.

The Ministry of Local Government, Land and Housing established the Department of Social Welfare and Community Development in the early 1970s. The services delivered by the department, although not specifically aimed at PWDs, were intended to assist all those in need. In 1992, this department, now known as the Division of Culture and Social Welfare, was taken over by the Ministry of Labour and Home Affairs. The Division is involved in supplying social welfare services to the whole population (including people with disabilities) in co-operation with local authorities.

Despite these arrangements, Botswana's provisions for PWDs are very far from meeting the objectives and guidelines set out in the CRPD. The main reason is that the country has no legislation on disability issues and rights. However, some of the people interviewed said that there was a general expectation that the policy under review (see above) will eventually be replaced by a law.

A small Disability Unit has been established in the president's office, apparently in response to pressure from the BCD and its affiliates. Although in time this unit will be responsible for coordinating the mainstreaming of disability issues by all government departments, the members of the unit are currently occupied in adapting to the new institutional environment and engaging in 'stakeholder consultation'.[49]

At this stage, it is impossible to predict when Botswana plans to sign and ratify the Convention. During the interviews, some of the respondents noted that the government regarded some of the provisions of the Convention as incompatible with certain aspects of Botswana law (for example the right to life, given that Botswana continues to uphold capital punishment). However, Ramsay from the BCD indicated that the government had promised to start the process of signing and ratification soon.[50]

CSOs/DPOs in Botswana

Although the BCD provides rehabilitation, skills training, education and advocacy services to PWDs,[51] it is also the coordinating body for all DPOs in Botswana. It acts as the umbrella for 30 affiliated organisations that offer a wide range of services. In general, these projects are distributed across the country, although there are none in the province of Ghanzi. The services they provide include:

- rehabilitation programmes (such as physiotherapy, occupational and speech therapy, referrals for corrective and restorative surgery and orthopaedic appliances);
- pre-school or day-care stimulation and primary school educational programmes for children with visual and hearing impairments and physical, multiple and mild to moderate mental impairment and learning disabilities;
- community-based rehabilitation programmes;
- community-based income generation or job creation programmes that offer economic empowerment to PWDs;
- vocational training, skills development and the creation of sheltered employment opportunities; and,
- advocacy for equal opportunities for all PWDs.[52]

Compared with most other countries in the study, Botswana offers an exceptionally wide range of services that are also well dispersed throughout the country. The BCD and its affiliates combine practical interventions, advocacy work, and activities and services that reach communities at grassroots level. Only Zimbabwe's National Association of Societies for the Care of the Handicapped (NASCOH) can offer anything comparable. In most of the other countries that formed part of the research, respondents lamented the lack of equivalent interventions that could enable PWDs to become more mobile and independent, enjoy a better quality of life, and, ultimately, claim their rights.

According to Ramsay, most of the foreign donors who had previously provided support to Botswana withdrew in the 1990s. Because it is now regarded as a middle-income country, Botswana is expected to provide for its own citizens. Therefore, the BCD receives a budget of P25 million (Botswana pula) from the government, which is expected to cover its own running costs and those of its affiliates. Interestingly, this income is supplemented by considerable subventions from sponsors like De Beers Botswana, the Botswana Diamond Company, the Botswana Housing Corporation, Standard Bank and First National Bank[53] – a situation unique to Botswana.

A regional research and advocacy NGO, named the Disability, HIV and AIDS Trust (DHAT), is based in Botswana. This organisation plays an important role in that it raises public, DPO and government awareness of the connection between HIV and AIDS and disability, conducts new research and formulates practical guidelines and interventions in this field. Its purpose is to 'mainstream HIV and AIDS and disability into DPOs and HIV and AIDS service organisations'.[54] Its location in Botswana is apt because the country has been particularly hard-hit by the HIV and AIDS pandemic.

Lastly, some of the interviewees reported the existence of a second umbrella body, the Botswana Society of People with Disabilities (BOSPAD), which is based in the town of Serowe.[55] However, very little information could be obtained on its nature and activities.

> *"Compared with most other countries in the study, Botswana offers an exceptionally wide range of services that are also well dispersed throughout the country."*

“the head of the Law Department confirmed that there were no courses that addressed disability rights in the current curriculum.”

The University of Botswana

There is only one university in the country, the University of Botswana, located in the capital city, Gaborone. The university has about 15,000 students but does not have a fully-fledged Faculty of Law. Its Law Department forms part of the Faculty of Social Sciences. The in-country researcher, Bonolo Dinokopila, was able to draw on his personal experience as a student and a part-time assistant lecturer in this department to provide information on the course content. At present, disability rights do not form part of the legal training offered by the Department of Law, although it has a course on human rights. The part of the syllabus that comes closest to discussing disability rights issues is that on social security law.

In an interview, the head of the Law Department confirmed that there were no courses that addressed disability rights in the current curriculum. However, he said that the department was not averse to exploring the possibility of such a course. In his opinion, it would probably work best as a multi-disciplinary module that would involve other departments in the faculty, such as Sociology and Social Work. (Some disability-related courses are offered in these departments but these focus on rehabilitation and are generally not rights-orientated.)[56]

The University’s Disability Support Services unit has the following objectives:

- to cater for the various impediments to learning of students with physical, sensory, learning, psychological and chronic health impairment; and,
- to provide psycho-social and educational support for students with disabilities.

Services that are provided include, but are not limited to:

- initial assessments;
- counselling;
- educational support such as
- alternative text formats
- scribes
- Braille study materials
- note-takers
- taped lectures
- readers;
- alternative examinations;
- learner support or student assistants;
- provision of assistive technology devices;
- liaison with academic staff and other departments; and,
- group discussions of various academic, psycho-social and personal issues.[57]

3.

LESOTHO

Prepared by Dr Lits'episo Matlosa

> *"Societies put up barriers that exclude disabled people and subject them to dependency and isolation."*

Introduction

All over the world, PWDs are deprived of their basic human rights. Societies put up barriers that exclude disabled people and subject them to dependency and isolation. It was against this background of unjust discrimination that the UN Convention on the Rights of Persons with Disabilities (CPRD) was adopted in 2006. Although the CRPD was expected to make a major difference to the lives of PWDs, most of the reports published since then have indicated that in many countries the situation of PWDs remains unchanged. The majority of disabled people continue to be denied their rights to participate in political and public life, to education and to employment.

This chapter presents an analysis of disability policies and legislation in Lesotho. This analysis was carried out in collaboration with the Lesotho National Federation of the Disabled (LNFOD), the umbrella organisation for Disabled People's Organisations (DPOs) in Lesotho. The role of LNFOD was to introduce the researcher to the DPOs in the country. There are four of these: the Lesotho Society of Mentally Handicapped Persons (LSMHP); the Lesotho National Association of the Physically Disabled (LNAPD); the Lesotho National League of the Visually Impaired (LNLVIP); and, the National Association of the Deaf, Lesotho (NADL). These DPOs were the major source of the information for the study. However, since the focus is on disability rights and law schools in the region, the involvement of the Faculty of Law at the National University of Lesotho (NUL) was also of prime importance to the project.

Data collection

In general, most of the data were collected through questionnaires administered to all the DPOs in the country and the lecturer in human rights at NUL. Information from the questionnaires was supplemented by personal interviews with key personnel drawn from the DPOs. Desk research and a literature review were also carried out to assist the analysis of key information relative to the rights of PWDs in Lesotho.


ANGOLA
ZAMBIA
MAL AWI
MOZAMBIQUE
ZIMBABWE
NAMIBIA
BOTSWANA
SWAZILAND
LESOTHO
SOUTH AFRICA

Information was also obtained from the national constitution, policy documents, reports and other relevant documents.

The situation of PWDs in Lesotho

The lives of PWDs in Lesotho are characterised by dependency and exclusion from mainstream society.[58] This makes it difficult for them to claim their basic social, economic and educational rights. These barriers are both environmental and attitudinal in nature.[59] Environmental constraints (referring here to the sociological environment in Lesotho) relate to a range of institutional barriers that include lack of physical access to public buildings and transport, and the limited availability of mental stimulation in the form of information and the availability of communication systems. The social barriers they face are attributable to the unfounded beliefs about PWDs that most able-bodied people in Lesotho hold. The interviews and the literature review both show that in Lesotho, disability has long been regarded as a taboo. Consequently, the birth of children with disability is a source of embarrassment to their families. Such children are often locked indoors, away from the rest of the community. Consequently, most of them end up abandoned or neglected, and extremely vulnerable. The situation is even worse for mentally and intellectually disabled children, who are frequently subjected to detention in psychiatric facilities or other institutions.

Many families with disabled children remain reluctant to send them to school for a variety of reasons. Firstly, because of the stigma associated with disability, some parents of disabled offspring are reluctant to expose them to hurtful treatment by others. Keeping them indoors is these parents' way of protecting them from being ridiculed by other children. Secondly, some families are not willing to 'waste money' on the education of disabled children because they are convinced that nobody will offer them employment after they leave school. In such families, priority is given to educating those children who are not disabled. Consequently, most PWDs lack even basic education.

For those few disabled children who are lucky enough to go to school, the education system is not receptive to pupils with special learning needs. Many schools unwittingly create a number of obstacles that hamper the progress of disabled learners. For example, school buildings may not be easy to enter or move around in for mobility-impaired or blind children, and many teachers have received no training in the skills and alternative methods needed to instruct children with different disabilities. A case in point is the difficulty that deaf children experience when their teachers cannot communicate with them at all. Not only are few teachers proficient in sign language, but many of these children have not yet learned to use it. Because of the comprehension barrier, deaf children are often assessed as being unable to cope with academic work and are consequently

> *"disability has long been regarded as a taboo. Consequently, the birth of children with disability is a source of embarrassment to their families."*

denied the chance to realise their full potential. Many of these pupils do not progress beyond the primary level. For the few who pass the Primary School Leaving Examination (PSLE), there is little hope of progressing further because none of the secondary or high schools in Lesotho is equipped to accommodate deaf learners.

On the other hand, visually-impaired children are better provided for. After completing their primary school education, they can seek admission to St Catherine's High School, an Anglican Church institution that has Braille facilities. At this school, sight-impaired learners follow the same curriculum as students in other schools up to Form C.[60] Beyond this level, they cannot continue with courses such as mathematics, science and geography because St Catherine's does not have the special equipment that enables blind people to read formulas and maps. If these learners go on to university level, this lacuna in their high school education restricts their choice of study programme.

Because of their general lack of education, the majority of PWDs are unemployed, which makes it all but impossible for them to escape from poverty. They frequently require medical treatment or technical aids that are expensive; they are dependent on the care of others; and, if they are unable to work, or cannot find employment, they have very few options. Their situation is not helped by the attitude of potential employers, who are often disinclined to incur the costs involved in adapting the workplace to accommodate their needs, such as providing ramps, larger lifts and more spacious toilet facilities for workers in wheelchairs. This is assumed to be the reason that both the government and the public sector in Lesotho are reluctant to employ PWDs. This view is confirmed by members of LNLVIP, who argue that the government is averse to employing blind or partially-sighted graduates because they need special equipment to enable them to perform their duties. It is also very inconvenient for an employer to hire a deaf person, since the former may also have to engage a sign language interpreter.

Another reason for the difficulties PWDs experience when seeking employment is the common belief that they are 'abnormal'. For instance, when deaf people apply for a job, their inability to communicate orally is immediately apparent. Those PWDs who are offered employment have to prove themselves twice over, unlike their able-bodied counterparts, to show that they can do the same job. They also earn less than 'abled' workers. As far as visually-impaired people are concerned, their responses revealed that in most cases they do not have the luxury of choice. Generally, the only type of employment available to them is being a switchboard operator, regardless of their qualifications. These respondents also pointed out that people who become visually impaired after having worked in some capacity are generally not allowed to continue in that position. They attributed this trend to the stigma attached to disability.

The responses obtained from the DPOs indicate that they do not make sufficiently serious efforts to raise awareness of health issues, including HIV and AIDS, among PWDs. The government's attempts to disseminate important information on health matters, especially AIDS, seldom reach the disabled, many of whom are isolated even within their homes. Attempts by the authorities to distribute printed material to the public are not useful to blind people unless they are printed in Braille, and television and radio broadcasts on health matters do not reach the hearing-impaired. As a result, few PWDs know about the various services that are provided to address their health needs, and therefore do not take advantage of them. In addition, those medical centres that

"the government is averse to employing blind or partially-sighted graduates because they need special equipment to enable them to perform their duties."

are available to PWDs are lacking in various respects: they are not adapted to meet the needs of the mobility-impaired, and seldom have the equipment and medical expertise necessary to cater for the health needs of people with an assortment of disabilities.

The lack of information on HIV and AIDS is particularly harmful to PWDs, who remain among those most vulnerable to infection. LNFOD, with the support of the National AIDS Commission (NAC), has set itself the goal of reducing the prevalence of HIV among disabled people by using DPOs to disseminate information about the epidemic.

Another factor that appears to contribute to the difficulty PWDs experience in improving their lives is a very low level of self-esteem. They are not aware of their entitlement to basic human rights, and most of them have little or no understanding of the CRPD and what it might mean for them. Therefore, LNFOD and its member organisations have undertaken a variety of advocacy activities on disability rights, and started campaigns to raise awareness of the Convention's provisions among members of the public and PWDs. This is done through the Community-Based Rehabilitation (CBR) programme, which is supported by the Norwegian Association of the Disabled (NAD). The main aim of NAD is to help DPOs to advocate around disability issues and sensitise the general public to the plight of PWDs. LNFOD also has the support of Skillshare International, which aims to help PWDs to earn livelihoods and in turn improve their socio-economic status.

The support of NAD and Skillshare International is important to DPOs. Although the latter acknowledge that they receive small subventions from the government, they need additional funding from local and international donors if they are to reach a greater number of PWDs and increase their advocacy efforts. The responses made by DPO members during the interviews indicated their belief that international donors can influence members of the government through informal lobbying. They also acknowledged the importance of the role the media can play in bringing disability issues to the attention of both the government and the public. However, they acknowledged that their own organisations need to involve the press more fully in their advocacy work, particularly those newspapers that have the approval of the government.

Legislation review and the implementation of the CRPD

The Lesotho Constitution of 1993 prohibits any form of discrimination against any member of the society. Section 18 (3), page 33, stipulates that citizens shall not be discriminated against on the basis of:

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disability or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

In terms of the above, the state is expected to design and implement policies that enable PWDs to participate as equal members of the Basotho. This can be achieved by either promulgating laws that address the concerns of people with disabilities specifically, or by amending existing laws to ensure that PWDs are included in their provisions. In 2008, the Ministry of Health and Social Welfare developed The National Disability and Rehabilitation Policy: Mainstreaming Persons with Disabilities into Society. Its main objective is to enable PWDs living and working in Lesotho to realise their full potential. In terms of the policy, this is to be achieved by:

- removing barriers and challenging the attitudes that prevent PWDs from gaining access to employment, services and public amenities;
- ensuring PWDs are given equal opportunities to participate in socio economic activities and decision-making; and,
- acting as an example of good practice, to encourage entities in both the private sector and civil society to follow suit.

According to LNFOD, the CRPD marks a paradigm shift in thinking about disability – changing it from a social welfare concern to a human rights issue and acknowledging that societal barriers are themselves disabling. The Convention covers every issue that is relevant to PWDs, including the provision of special education, the elimination of discrimination and the fundamental issues of access to public amenities, transport and information. After the CRPD was opened for signature in 2007, DPOs in Lesotho employed a number of different strategies to urge the government to ratify the Convention. One of these was the 'Joint Open Letter on the Convention on the Rights of Persons with Disabilities', which was signed by members of NGOs, service providers, international agencies, religious groups and trade unions, and sent to the Prime Minister. This letter outlined the benefits that PWDs in Lesotho would gain from ratification. On 2 December, 2008, the country ratified the CRPD. However, while Lesotho is now bound by international law to implement its provisions, there has been no evidence that any attempt at doing so has yet taken place.

Many of the DPO respondents interpreted the final draft of the Disability Policy as a step towards the implementation of the provisions of CRPD. In this document the government, through the Ministry of Health and Social Welfare, promises to establish appropriate and efficient structures and systems to manage, coordinate and oversee the implementation of the Convention. The government is expected to undertake to supply the necessary financial and material resources to make these arrangements viable. However, the Policy has not yet been adopted, so the Lesotho government has so far failed to carry out any of the undertakings it made in ratifying the CRPD.

Furthermore, none of the DPO representatives interviewed during this research study is aware of any existing legislation concerning PWDs, or of any strategic litigation on disability rights that has taken place or is pending. The Lesotho government has not conducted a legislative review to assess the legislative changes needed to domesticate and implement the Convention. The researchers were also unable to find any evidence that the authorities had made any feasibility studies on the capacity of various government departments to make disability issues a mainstream concern. It is the general opinion of most of the DPOs consulted that the government does not really understand the full implications of ratifying the Convention.

The National University of Lesotho

The University does not have any specific policy relating to people with disabilities. However, members of staff are appointed regardless of whether or not they are disabled, and the same applies to student admissions (to some degree). The application form for admission to the University requires all applicants to indicate whether or not they have any physical disability, its nature and the special facilities they require. The reason is that such information is necessary if the University is to decide whether it can accommodate a student with his or her type of disability. To date, the NUL has admitted only disabled students who are visually and mobility-impaired. Ramps leading to most of the buildings on campus have been built to make them accessible to students in wheelchairs, while Braille books, texts and computers are provided. There is also an assistant to help blind students unaccustomed to using these technical devices.

Although the effort made by the University to bring higher education within the reach of students with disabilities is laudable, it seems that this policy is also exclusionary in that it admits only two categories of disabled students. For example, no provision is made for deaf students. Another point is that many disabled children do not progress beyond high school because there are few teachers who have been trained to cater for their needs. Therefore, these young people are not eligible for tertiary education.

The noticeable absence of students with other types of disability in this tertiary institution led to the establishment in 2009 of the Special Education Department in the Faculty of Education. This department aims to equip secondary and high school teachers with the skills necessary to instruct learners with diverse needs. (Previously, the government provided special training only for primary school teachers.)

The University's Department of Social Work also offers courses that focus on disability. An example is SW 3116, Principles and Practice

> *“lecturers are not currently being given training in the skills necessary to meet their needs, especially when the lectures were being given to ‘abled’ students as well.”*

of Rehabilitation. The NUL 2007/8 Calendar describes the content as follows:

This course provides a general background of disablement and considers the different methods of rehabilitation. It gives an overview of the disability process and levels of prevention or intervention. It will look at the administration and or/approaches to rehabilitation e.g. institutions and the community-based integrated approach to rehabilitation and vocational training. It will also look at social work with disabled people e.g. children, women, men and the elderly.

In addition, the Department of Theology and Religious Studies (soon to be known as the Department of Theology and Psychological Studies) has made a submission to the Academic Planning Committee (APC) for permission to introduce a Master’s course named CPCC 608, Pastoral Care for People with Disability. In the submission, the proposed course will:[61]

trace...the evolution and construction of disability from the Bible down to the modern industrial and economic era. Different models, ranging from the biomedical to socio-political, that have characterised disability studies up to now will be subjected to critical analysis.

Although the University is making efforts to accommodate those disabled students it does admit, lecturers are not currently being given training in the skills necessary to meet their needs, especially when the lectures were being given to ‘abled’ students as well. The study conducted by Matlosa and Matobo[62] described the responses given by lecturers who were expected to teach visually impaired students. They were not informed in advance when their classes would contain blind students; they were ignorant of what should be done to alter their lecturing practice to assist such students; and they were often accused of insensitivity towards them. When they attempted to compensate for these shortcomings by showing leniency to sight-impaired undergraduates, they were reproached for not treating them as equal with the other students. The helplessness and frustration that the lecturers felt under these circumstances caused many of them to say that blind students should not be admitted to the University while nothing was being done to give appropriate, specialised teacher-training to their lecturers.

The Faculty of Law

Disability rights does not form part of the law programme offered by the NUL. Since it is a human rights issue, one would have expected that disability would be covered under the course L482-6, Human Rights and Humanitarian Law. According to the 2007/8 Calendar, it includes the:[63]

[d]efinition, foundation/historical development and internationalisation of human rights; fundamental principles of human rights; UN and regional instruments on human rights; implementation or

protection procedures under both international and regional levels; national machinery for protection; the role of INGOs and NGOs.

However, the lecturer responsible reported that at the moment the course content was 'so packed' that there was no space for disability issues. There were so many Conventions that had to be dealt with in a single academic year that it was impossible to cover all of them. He admitted that he had never discussed the CRPD in class, and did not know whether Lesotho had ratified it. The lecturer would not discuss the teaching methods used in the faculty because he considered that the only important criterion was the degree of effort made by the lecturer concerned to impart knowledge effectively.

On the subject of whether the University had a disability policy, the lecturer concerned could not say. He did not know whether any legislation regarding PWDs existed in the country, and admitted that he had never taken issues relating to disability seriously. However, after having been told about the proposed programme, he acknowledged that lecturers in law ought to advance disability rights. He strongly supported the introduction of a course focusing on the subject, but said that it would be feasible only if external financial support was offered because the University was going through a financial crisis. He believed that the average period needed to establish and register new courses at the University was about two years.

Conclusion

Although the national constitution contains an explicit reference to disabled people, and undertakes to uphold and enforce their inherent human rights, there is little evidence that the government of Lesotho is proposing to act on these principles, or those of the CRPD. Discrimination against PWDs continues and the inequality of opportunity prevents them from enjoying what ordinary citizens take for granted – educational and health services, and employment. The difficulties caused by institutional barriers and attitudes based on stereotypical perceptions are compounded by the absence of any comprehensive laws, policies and procedures that address disability issues in Lesotho. Although DPOs make efforts to engage in advocacy to overcome these obstacles, their efforts are undermined by a lack of resources, both financial and material. This investigation underlined the need for the government to translate the CRPD into domestic policy and legislation. Only then can the lives of PWDs be improved.

4.

MALAWI

Prepared by Hermien Kotze, inclusive of a short report by Victor Jere, in-country researcher

> *“Very few PWDs are to be found in Malawian schools and universities, or in the workplace.”*

General context

People with disabilities (PWDs) constitute an estimated 15–20 percent of the population,[64] and are among the poorest and most disadvantaged people in Malawi. Very few have access to education, employment, health care and other essential services. PWDs are also to a large extent marginalised by other Malawians because there is a stigma attached to disability.[65] Most of the interviewees reported that PWDs generally live in rural villages, where the possibility of benefiting from essential services, earning independent livelihoods and becoming fully integrated into their communities is even more remote than in urban areas.

Children with disabilities, especially those from rural settlements, have very few opportunities to attend school. Most of their parents are poor and cannot afford education for them. Where children with disabilities do overcome the many obstacles to gaining entry into mainstream schools, their teachers were generally described by the interviewees as unsupportive and lacking in the training required to teach children with special needs. As a result, literacy rates for PWDs in Malawi remain very low,[66] a situation which affects not only their personal prospects but also their ability to help DPOs put pressure on the government to commit itself more fully to realising the rights of the disabled.

Very few PWDs are to be found in Malawian schools and universities, or in the workplace. None of the respondents knew of any official disability policies that applied to the education sector, and this lack of policy extends to the health sector as well. Public buildings and transport systems do not cater for mobility-impaired PWDs, adding to the enormous difficulties they encounter when they attempt to make use of those essential services that are available. All of the above make it almost impossible for PWDs to participate in the social, economic and political life of the country. They are treated as second-class citizens and condemned to a life of poverty.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SWAZILAND
LESOTHO
SOUTH AFRICA

Discrimination against PWDs has been perpetuated by the failure of the Malawian government to adopt any measures to give disabled people the assistance they need if they are to work or study on equal terms with those who are 'abled'. For instance, on one occasion the University of Malawi's Chancellor College allowed a blind student to enrol, but made no arrangements to provide Braille equipment for him. Until recently there were no ramps on campus for the use of students in wheelchairs, which made the library and many of the other facilities inaccessible to them. Even classes were occasionally held in spaces that mobility-impaired students were unable to enter. This situation is prevalent in many of the other public institutions and buildings in Malawi. The interviewees reported that very little publicity is given to disability rights in the media, in politics and at cultural events that take place in the country, and that consequently public awareness of such issues is very low.[67]

Legal review

Malawi signed the UN CRPD on 27 September 2007 and ratified it on 27 August 2009.[68]

The country follows the common-law system. The only law that focuses specifically on issues relating to disabled people in Malawi is the Handicapped Persons Act of 1971. This Act is now severely out-dated as it was based on the (now discredited) charity and medical approaches to disability, and makes no substantive provision for the rights of PWDs. Its main purpose was to establish the Malawi Council for the Handicapped (MACOHA), which was to act as the government's implementation agency for all matters concerning disabled people.[69]

The Employment Act No 6 of 2000 includes PWDs in a very general sense by prohibiting discrimination in the workplace.[70] However, the Act refers only to formal equality and does not make any concession to the argument that 'equal application of needs or rules or policies, without considering their differing effect on certain individuals and groups may result in discrimination against them and perpetuate inequality'.[71] The Act contains no provision for accommodating the special needs of PWDs in the work environment.

In 2006, the Malawi government adopted the National Policy for Equalisation of Opportunities for PWDs, which was its first rights-based policy initiative. Among its aims was to:[72]

> *promote the rights of PWDs by providing them with equal opportunities, adapting the environment to their needs, encouraging society to positively change its attitudes towards PWDs and assist them in assuming full responsibility as active members of society.*

After signing the CRPD in 2007, Malawi drafted the Equalisation of Opportunities Bill of 2008, which is still pending before Parliament. However, the Ministry of People with Disabilities and the Elderly has continued to hold consultative workshops with various interested parties, including DPOs, with the aim of refining the Bill to make it consonant with the CRPD.[73]

Other than the changes made to the earlier Act in drafting this Bill, no comprehensive legislative review has taken place. As far as can be ascertained, no feasibility study has been undertaken to determine how every government department can make disability a cross-cutting issue in all its planning and activities. The Chief Disability Officer in the Ministry of Persons with Disabilities acknowledged the need for such an exercise. He stated that his Ministry advocated the mainstreaming of disability issues in all its interactions with other government departments, but that each department had its own priorities.[74] (This implies that disability is not one of them.)

Strategic litigation

At the time of writing, no strategic litigation on disability issues had taken place in Malawi. However, according to the Executive Director of the Federation of Disability Organisations in Malawi (FEDOMA),[75] which is the umbrella organisation for eight DPOs, the Federation was about to file one such case. He did not provide any details.

DPOs

Most DPOs in Malawi are affiliates of FEDOMA. Among the Federation's objectives are to promote the rights of PWDs; advocate for equality of opportunity for PWDs; and, coordinate and strengthen the capacity of its affiliated DPOs.[76] Like most of the DPO umbrella bodies in southern Africa, it appears to be more financially secure than most of its affiliates, although some of the latter – like the Malawi Union of the Blind and the Parents of Disabled Children's Organisation (POPCAM) – were reported to be reasonably well-funded.[77] However, these are the exceptions. In general, donor funding to such organisations has dwindled significantly and most DPOs in Malawi are struggling to survive, relying almost wholly on volunteer workers. The general impression gained by the researchers was that the disability movement in Malawi is currently at a low ebb.

DPOs interviewed

FEDOMA: A short initial discussion with Victor Jere

Association of the Physically Disabled

Malawi National Association of the Deaf (MANAD)

Parents of Disabled Children's Organisation (POPCAM)

Law School, Chancellor College, University of Malawi

The Law School does not at present offer any courses on disability rights. However, senior academic staff members said they felt confident that it could do so, especially in the context of an existing course on human rights law. They also expressed the opinion that, with some extra training, the lecturers in the School could teach the course, possibly supplemented by guest lecturers. Among the latter could be people who worked in the disability movement.

Registering a new course at the university usually takes between six to twelve months but the process might take longer if more inclusive consultation was involved.

The teaching methods used in the School are a combination of lectures, tutorials, seminars and practical exercises. Visits from invited lecturers who are practising legal professionals are also used to expose the students to some of the practical aspects of pursuing this career path.

The University does not have a disability policy or a disability unit, as far as the respondents were aware. However, it has started to make special efforts to respond to the needs of students with disabilities, especially those who are visually impaired.

> *"The University does not have a disability policy or a disability unit, as far as the respondents were aware."*

5.

MOZAMBIQUE

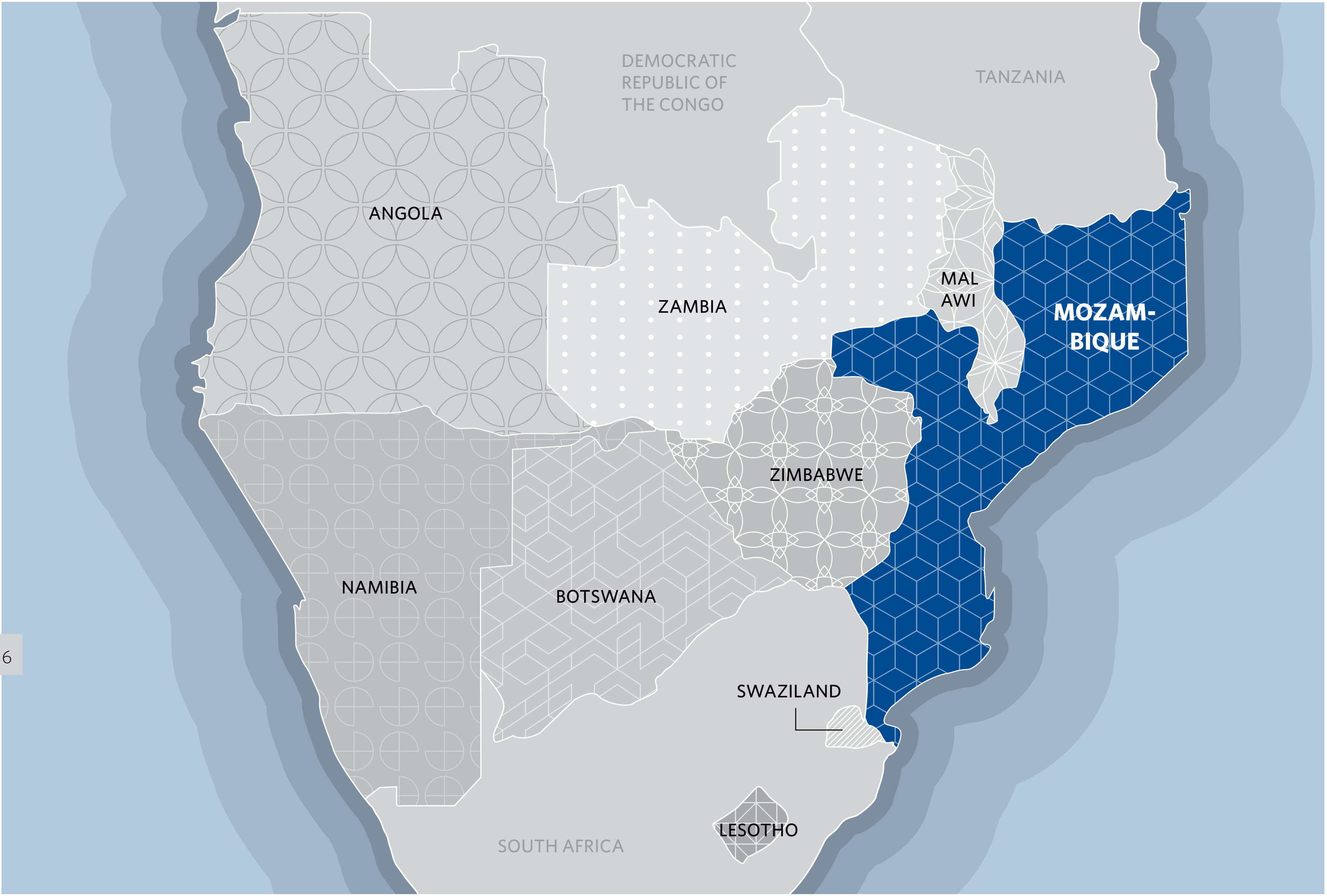
Prepared by Hermien Kotze based on a report by Claudio Focquico, initial in-country researcher and interviews conducted in Mozambique

> *“80 percent of children with disabilities do not attend school, although education in Mozambique is both free and compulsory.”*

General context

Mozambique is one of the poorest countries in the world. It faces huge economic and social development challenges because, like Angola, it is attempting to recover from a long civil war. In the SINTEF study on disability in Mozambique, which is referred to in the main report, the writers estimated that around 5.5 percent of the Mozambican population have a disability. They also noted that PWDs are among the poorest and most vulnerable people in the country. Most PWDs have very limited access to almost all the basic services, particularly education and health.[78] Discrimination was widely reported to be rife throughout Mozambican society, particularly in the remote rural areas, where most PWDs were to be found.

The majority of PWDs in Mozambique have little formal education, as was the case in every other country in the research study. Illiteracy rates are therefore high, a situation that affects their prospects of employment, and undermines the operations and effectiveness of DPOs, for which disabled people work. According to the Mozambique Education Report, compiled by the Secretariat of the African Decade in 2007, it was estimated that 80 percent of children with disabilities do not attend school, although education in Mozambique is both free and compulsory.[79] The Ministry of Education, despite a lack of properly trained teachers and relevant materials, has been implementing policies for both special and inclusive education for PWDs to ensure that disabled children can derive greater benefit from attending school.[80] In 2007, inclusive education strategies and approaches were integrated into the new teacher training models for primary (Form 10+1) and secondary education (Form 12+1) through the subject of psycho-pedagogy.[81] It is hoped that these changes will gradually percolate through the system and make education for a much larger number of disabled children an achievable target.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As both direct and indirect results of its decades of war, Mozambique contains a high number of physically disabled people. During the interviews, many of the respondents complained about the inadequacy of the supply of assistive devices and technical aids to meet the needs of so many people. This situation has a number of undesirable consequences for those who are denied such aids. The most obvious of these are severely constrained mobility and lack of independence for those who require wheelchairs, crutches and artificial limbs.

On the positive side, a considerable number of international DPOs and donor organisations are active in the country. Among them are Disability and Development Partners (DDP), Handicap International, the Red Cross in Mozambique and the Norwegian research body SINTEF. Their contributions to improving the lives of PWDs range from practical interventions like making and providing prostheses to undertaking cutting-edge research into disability. The Mozambican government also appears to have a progressive and well-informed understanding of the needs of the disabled, but to lack the means to translate political discourse and forward-looking policies into everyday practice. The government ministry for Women and Social Action (MMAS) is largely responsible for matters relating to disability, but its activities are constrained by its share of the state budget, 'which is so insignificant and therefore nothing can be done'.[82]

The Mozambican legislative and policy framework

Mozambique signed the CRPD on 30 March 2007, but has not yet ratified it.[83]

The Mozambican legal system is based on civil law, which lays down a procedure for the process:[84]

> *in civil law countries, ratification [of international treaties] takes place through the approval of the treaty by the legislative branch. After the vote of approval, the ratification act is sent to the executive for its promulgation, publication and deposit with the depositary of the treaty.*

In 1990, Mozambique adopted a new constitution, which recognises the inherent dignity and equality of rights of all citizens, without distinction of any kind.[85] The constitution provides special protection for people with disabilities, but distinguishes between those disabilities arising from the war and those occurring from other causes. The constitution provides for better protection for the former group, as it 'requires the government to take all the responsibility for the special protection of persons who were disabled as a result of war'.[86] Articles 16, 37, 95 and 125 provide protection for PWDs. Article 16, for instance, sets out the following undertakings:

- The State ensures social protection to people who became disabled during the armed struggle, which ended with the signature of the General Peace Accord in 1992, as well as orphans and other direct dependants of disabled veterans.
- The State protects equally those who became disabled in fulfilment of public services or on humanitarian missions.
- The law determines the terms of execution of rights enshrined in this Article.

National policy and plans relating to disability

Although Mozambique has not enacted any specific legislation on disability, it has a number of laws, policies, plans and decrees that address some of the issues that touch upon the lives of PWDs. The country has a National Policy on Disability, National Action Plans on Disability (the latest for 2011–2019), policies on inclusive education and special education, and a decree on accessibility. Special protection measures for PWDs are set out in the country's Labour Law.[87]

Resolution no 68/2009 outlines a strategy for accommodating civil servants with disabilities.[88]

Law no 12/2009 recognises the particular vulnerability of PWDs to HIV and AIDS 'because of the risk factors and aggravated by the challenges of accessing all the mechanisms of prevention'.[89] Therefore, it grants PWDs the right to be given priority by counselling and HIV-testing services. This is unique among the countries chosen for this study. It may be attributable to the raised awareness of the connection between HIV and AIDS and disability resulting from the research conducted by the DDP in Mozambique. (This is discussed in some detail in the main report.)

Law 6/92, which deals with the Right of Disabled Children to Education, stipulates both the form and the method to be used in the country's educational provisions, particularly in special classes for disabled children in mainstream schools. It also provides for vocational training to assist disabled learners to enter the labour market and become better integrated into society.[90]

The National Policy on Disability

The aim of the National Policy (1999) is to promote equality between all citizens, without distinction of any kind, by making PWDs active participants in every aspect of national life. This policy embraces certain principles, among them the rights to:[91]

- lead an independent life;
- be integrated with the family and community;
- be provided with means of rehabilitation;
- receive education and special and vocational training;
- work;
- enjoy social protection; and,
- be given information.

In order to fulfil these aims, the government has initiated a number of sectoral strategies.

1. The country's legal system must adopt non-discriminatory policies, revise existing laws to accommodate the rights of people with disabilities, and ratify international conventions dealing with the rights of PWDs.

2. The country's education system must ensure that general or special education of an adequate standard is made available to disabled pupils.

3. The country's health system must provide civic education on the prevention of diseases and conditions leading to disability. It must also manage and coordinate public services and identify other necessary measures: 'MISAU is responsible for the design and implementation of policies that enable disabled people to access health care, rehabilitation, aids and appliances'.[92] With the exception of Manica, each of Mozambique's 10 other provinces has its own rehabilitation centre. However, reaching these centres remains a problem for most of the widely-dispersed population of the rural areas.[93]

4. The country's social action system is responsible for educating the public in matters concerning the problems of PWDs, promoting initiatives to support them, and ensuring that disabled people and their families are given social protection.

5. The country's employment system must develop forms of vocational training that are suitable for PWDs. The Ministry of Labour (MINTRAB) has drawn up policies and devised strategies to foster the personal development of PWDs and improve their chances of finding employment through the Institute for Employment and Professional Training (INEFP).[94]

6. The country's fiscal system must introduce tax benefits and exemptions for PWDs.

7. The country's urbanisation system must adopt measures that ensure ease of access to buildings and public places, and provide housing for PWDs.

8. The country's transport system must make public transport services suitable for use by PWDs.

9. The country's cultural, sport and recreation system must ensure that PWDs are encouraged to participate actively in cultural and sport activities. The Ministry of Youth and Sports has established the Sports Federation for People with Disability.[95]

10. The country's social communication system is charged with disseminating information important to PWDs.

Constraints on implementation of the National Policy

The National Policy requires government ministries to adopt measures that enable PWDs to claim their human rights. It also extends the responsibility for respecting the rights of PWDs to civil society in general. The government has subscribed to both the United Nations Decade (1982–1992) and the African Decade (1999–2009) for people with disabilities.

The Mozambican government has sound and progressive policies about disability on record, but the practices that would make a material difference to the social standing and treatment of PWDs have not followed. '[T]he problem is in the non-implementation and monitoring of their policies.'[96] Disabled people in Mozambique continue to suffer from widespread discrimination, very limited means of gaining an education (and consequently employment), and the frustrations due to the physical impediments to their using public transport and entering public facilities that are convenient only for the able-bodied. The reason for this failure on the part of government to act on the Policy is widely attributed to a very limited budget.

Although the National Action Plan for Disabled People declares that many different ministries should be involved, almost all of the practical problems relating to PWDs are transferred to the Department for Social Action. The Ministry of Women and Social Action (MMAS) is responsible for implementing the Plan at the national, provincial and local levels, but it has limited powers to do so because it has neither the personnel nor the funding. However, the National Institute of Social Action (INAS), which is the branch of the MMAS that carries out the Ministry's programmes for vulnerable groups countrywide, receives a generous allocation from the state budget to assist its efforts.[97]

The National Action Plan for Disabled People

A time-bound National Plan of Action on Disability and an Action Plan for PWDs was initiated five years ago (covering 2006–2010) and renewed (2011–2019). The intention of the Plan was to support the universal human rights framework promoted in the African Decade by guaranteeing the social inclusion of PWDs. This instrument established a system that covered rehabilitation and medical and family support services for PWDs, and provided them with greater socio-economic assistance.[98] It was the result of a number of surveys conducted by the Mozambican DPO forum, *Fórum das Associações Moçambicanos dos Deficientes* (FAMOD), with the aim of identifying the constraints affecting PWDs and suggesting ways to meet their basic needs. (FAMOD enjoys a relatively close relationship with the government, particularly with MINARS.[99])

In 1995, two of the country's provinces lacked rehabilitation centres. To remedy the situation, the DPP launched another centre, in partnership with the Mozambique Red Cross Society (CVM) and in consultation with the Mozambican Ministry of Health (MISAU).

COJ and CVM were involved in the Disability Awareness and Development Programme (DADP), a tripartite initiative also including DDP's Mozambican DPO partner, Associação dos Deficientes Moçambicanos (ADEMO, the Mozambican Association of Disabled People).

The DADP programme, which focused on capacity-building, was the first product of the DDP's partnership with ADEMO.

The National Strategic Plans

In 2000, MMAS launched the first of their National Strategic Plans. The initial period covered was 2000–2001; the second, 2003–2004; and third, 2005–2007. These were intended to address HIV issues and their effects on vulnerable groups, under a mandate from the National AIDS Council. The National Strategic Plan (PEN I and PNSC II) for groups vulnerable to HIV and AIDS centres on women and children. No reference is made to PWDs. There is consensus among those working in the disability movement that all HIV and AIDS-related programmes should include PWDs in the category of the most vulnerable.

"DPOs in Mozambique are hampered by numerous difficulties, the most notable of which are a lack of competent staff members and sufficient funding."

Organisations for disabled people in Mozambique

The first DPO in Mozambique, ADEMO, was established in 1989, with others following during the 1990s. The Association of Disabled Soldiers of Mozambique (ADEMIMO) and the forum for Mozambican Disabled Associations (FAMOD) were launched in 1992 and 1999 respectively. There are other DPOs such as ACRIDEME, the Association for Parents of Children with Intellectual Disability; ASUMO, the Deaf Association of Mozambique; AMOFAS, the Association of Families and Friends of the Deaf; AJODEMO, the Disabled Youth Association of Mozambique; and ADESU, the Association of University Students with Disabilities.

In common with similar organisations across the region, DPOs in Mozambique are hampered by numerous difficulties, the most notable of which are a lack of competent staff members and sufficient funding. Although some organisations – like the umbrella body FAMOD, which works closely with the government on certain issues – have undertaken successful advocacy and lobbying campaigns, most of the country's DPOs are rendered ineffective by the constraints they face. As indicated above, international NGOs like Handicap International play an important role in the promotion of the rights of PWDs.

The European Commission has provided €5 million in funding for 15 different projects involving disabled people.[100] DPOs also receive smaller amounts from foreign donors, many of these from Finland such as the Finnish Association of the Deaf (FAD); the Finnish Association of Mental Retardation (FAMR); and the Finnish Persons with Disabilities International Development Association.

Universities and law schools

Although disability rights are mentioned in, or form part of, general law courses in Mozambique's tertiary institutions, the subject is generally not taught as a separate course.

- At the law school of the Higher Institute of Economics and Management (ISTEG) in Mozambique, disability rights form part of general courses on political science and constitutional law, but are 'very lightly touched'.
- At the Universidada Zambeze in Mozambique, disability rights are dealt with under International Public Law, 'but not very carefully'.
- At ISCTEM, disability rights are part of the subject-matter of Fundamental Rights in the fourth year. They are also included in the International Law course, which 'addresses the issue lightly'.

Members of the law school at the Eduardo Mondlana University were also interviewed.

As in the other countries that formed part of the study, the general level of awareness and knowledge of disability issues and rights appeared to be limited among lecturers in law. However, those interviewed expressed an interest and a willingness to explore the possibility of a course or courses on the subject. In most cases, the respondents warned that the establishment of such a course would entail extra financial and human resources, staff training and development, and the purchase of course materials and relevant bibliographies. Their estimates of the average time taken to launch a new course in the law schools of Mozambique varied from six months to a year.

Most of the above institutions appeared to be experimenting with more innovative teaching methods, including problem-based learning (PBL), 'masterly classes', and practical internships in juridical centres.

6.

NAMIBIA

Prepared by Yvonne Dausab, in-country researcher

> *“no persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.”*

The National Legislative and Policy Framework

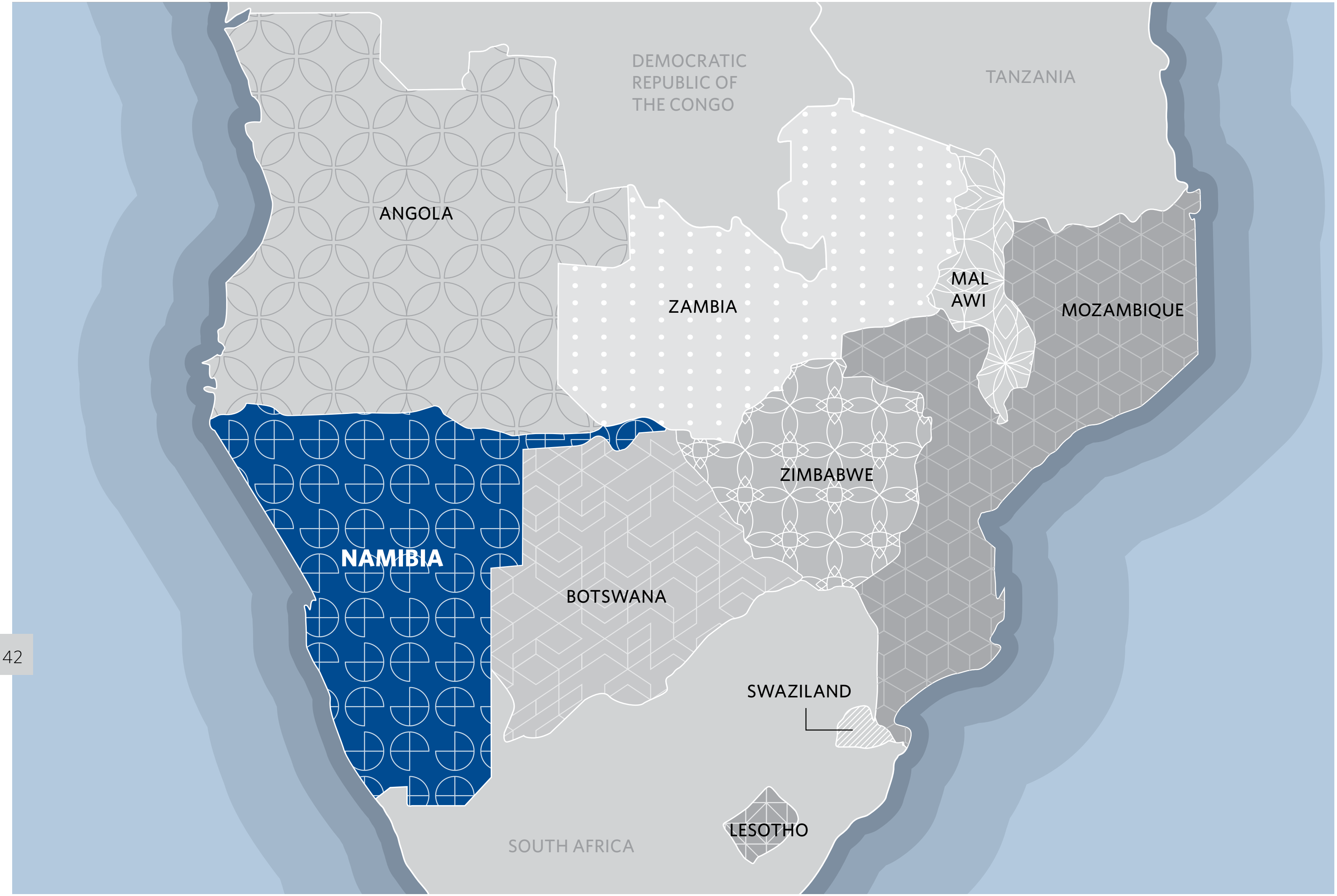
Although Namibia is relatively accepting of international laws,[101] in terms of Article 1(6) of its constitution, the latter is supreme. This means that within the country, all conduct and laws are subject to its provisions. Namibia’s general laws are historical remnants of the Roman Dutch and South African common law traditions. In its post-independence jurisprudence Namibia continues to support that common law orientation. And while the country’s approach to international law is monist (as will be discussed in greater detail below), in practice the provisions of international treaties to which Namibia is a party are more likely to be implemented domestically if the country passes enabling legislation to consolidate their effect.

A number of provisions in the constitution that was adopted in 1990 concern the protection and promotion of the rights PWDs. There is a typical statement of the principle of non-discrimination in Article 10, which declares: (1) ‘All persons shall be equal before the law; and (2) no persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.’

In Article 23, on affirmative action, the constitution requires Parliament to enact legislation that is specifically geared towards the advancement of people who have been disadvantaged in the past. (People with disabilities fall into this category)

As part of the principles governing state policy, Article 95 requires the government to adopt policies that ensure the rights of the unemployed, and provide those who are incapacitated and disadvantaged with social services.

The recognition of the need to protect and promote disability rights that is evident in Namibia’s constitution is reflected in the plethora of policies and legislation with the aim of advancing the rights of PWDs that have since been adopted.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“Namibia’s record shows an impressive commitment to international legislation on human rights.”

In 1997, Namibia published a National Disability Policy, which in general aimed to provide such services to PWDs, including education, as would enable them to take their place in mainstream society.

In September 1998, Parliament passed the Affirmative Action (Employment) Act 29. Its primary goal was to introduce appropriate means to create and promote equity in the workplace. The affirmative action measures it introduced are intended to benefit a group that includes ‘persons with disabilities i.e. physical or mental limitations, irrespective of race or gender’. However, despite the provisions of what is generally considered a good piece of legislation, little has been achieved in practice. The employment situation of people with disabilities continues to leave much to be desired.

The National Disability Council Act 26 of 2004[102] established a council that would take responsibility for managing and monitoring implementation of the Act, and all policies concerning disability rights in Namibia. The Council members are also expected to ensure that the country’s statutes are responsive to the needs of the disabled. This Act predates the UN CRPD, and therefore raises questions as to its compatibility with the latter. A review of the Act will be required, and amendments may be needed to align the national with the international law. The Policy, which is now a schedule to the Act, is also likely to be subject to the review process.

Although Namibia has a fairly comprehensive legal framework to cover the protection of vulnerable groups, it would appear that no case concerning discriminatory treatment of PWDs has been brought before the country’s courts. Even the Legal Assistance Centre, which provides the country’s most vocal and active public interest service, has no record of any disability litigation. This means one of two things. Either Namibia’s lawyers do not consider that any treatment of PWDs is sufficiently deleterious to require legal redress, or PWDs themselves are unaware that recourse to the courts is possible. However, there is a general expectation that the projects being conducted by the University of Namibia’s Legal Aid Clinic will result in litigation that involves the rights of PWDs.

The international framework

In general, Namibia’s record shows an impressive commitment to international legislation on human rights. It has ratified all the major human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (IESCR), the Convention Against Torture, Cruel, Inhuman and Degrading Treatment (CAT) and the Convention Against the Elimination of All forms Discrimination Against Women (CEDAW).

Namibia signed and ratified the UN CRPD on 4 December 2007 without any reservations or limiting conditions. In terms of this Convention it is enjoined to undertake legislative and other measures to ensure its effective implementation. However, because the Namibian constitution stipulates in Article 144 that ‘the general rules of public international law and international agreements binding upon Namibia under this constitution shall form part of the law of Namibia’, the CRPD has already become part of domestic law. In other words, if any of the terms of the

Convention are violated, PWDs can approach a competent court for relief.

The role of government in the promotion of disability rights and the policy documents supporting PWDs

There is evidence of the personal commitment of the current president to the cause of assisting PWDs in his appointment of Alexia Ncube, a disabled person, to Parliament[103] five years ago. Ncube is currently serving her second term as an MP. A rehabilitation centre has been established within the Ministry of Health and Social Services (MOHSS), and a Disability Unit has been formed and situated in the office of the Prime Minister.

The documents that inform the work of the government on disability issues include:

a) Namibia Vision 2030 sets out the policy framework for long-term national development. Part of its content refers to the importance of ensuring 'that people living with disability… are well integrated into the mainstream of society and have equal rights under the law', and recommends that PWDs are encouraged and assisted to participate actively in the economy and society.
b) The Public Sector Disability Strategy for 2010–2020 is a document that guides Cabinet decisions on the Continental Plan of Action for the African Decade of Persons with Disabilities (1999–2009, extended to 2010–2020). In March 2004 and 2007 Cabinet decided that the office of the Prime Minister should coordinate and monitor the implementation of the Namibia Disability Plan of Action in the government's various offices, ministries and agencies.
c) The function of the Disability Human Rights Awareness Strategy process is to conduct campaigns to raise awareness of PWDs in the general public.
d) The Disability Accessibility Award is intended to act as an incentive to those ministries that are at the forefront of promoting the inclusion of PWDs into everyday activities and ensuring that improvement of accessibility in all public buildings, spaces and means of transport is continuous.
e) The Disability Unit has drawn up a comprehensive guide to the understanding, and implementation, of the CRPD. This can be used for various purposes, such as awareness-raising, and possibly even as a reference for legal interventions and the legislative auditing process.

What all of the above have in common is their recognition of the need to make disability issues a mainstream priority within the country's public service mandate. It is hoped that they will also set an example that the private sector, institutions of higher learning, and other public and semi-public institutions will follow.

The situation of people with disabilities

Despite the progress made by the government in setting up laws and policies that address the needs of PWDs, they remain some of the most vulnerable people in Namibia. They continue to be subject to persistent neglect because society at large is mostly unaware of what is happening to those with disabilities. The call from PWDs themselves is clear: create more space for us in the bodies that make decisions and policies, and let us represent ourselves. According to the 2001 census, there were approximately 85,000 disabled people in Namibia. Ten years later, people working in the disability movement estimate that the current total is around 150,000.

In the words of the Special Advisor on disability issues to the Prime Minister,[104] the questions to be asked about PWDs are: where are they, what is their identity, what are their qualifications, are they employed, and what skills do they possess? The answers make it evident that few PWDs have a public identity, or are 'visible' in the public mind. Tjombumbi made this point during an interview in which the creation of a disability database system was discussed.

DPOs

There are six independent organisations dealing with issues affecting people with disabilities in Namibia. They are united under the umbrella of the National Federation of People with Disabilities in Namibia (NFPDN). This body was founded in 1991 with the sole purpose of bringing PWDs together and creating a platform for self-representation by activists, who realised that if disabled people did not stand up for themselves, other members of society would continue to marginalise and abuse them. Indeed, people involved in the disability movement face a double challenge: having to cope with their own disabilities or those of their children, and having to face social rejection because disability is regarded as shameful.

Namibian DPOs have been in existence for close on 20 years, and they have had their share of difficulties, the most prominent of which are a scarcity of funding and of skilled personnel. Using the mantra 'united we stand, divided we fall', these organisations have organised huge and successful awareness campaigns, particularly after 2001. These aimed to inform the general public of the competencies disabled people through income-generating and similar projects, and lobbied for changes that would make a material difference to the lives of PWDs. These included adaptations to infrastructure that made allowance for disabilities that affect mobility; measures to provide sight- and hearing-impaired people with access to information (for example texts and computers in Braille, sign language and a sign language dictionary); and inclusive education.[105]

The country's DPOs cover the spectrum of people with different disabilities: the visually impaired, the deaf, the physically disabled and the mentally disabled. The Namibia Association of Children with Disabilities (NACD), which is a support group for parents of children with disabilities, fights for their full integration into the mainstream activities of society, particularly the education system.

Youth with Disabilities (OYD) represents young people with disabilities. Although it appears that skills and leadership competence in this DPO are lacking, its office-bearers have very good ideas about how to empower young people. During the interview, the national coordinator reported having approached the Ministry of Trade and Industry, Youth and Sport and the Ministry of Health and Social Services to request funding for a catering and a carpentry project. Both of these are geared towards imparting entrepreneurial skills to young PWDs and in this way enabling them to generate income.

Other DPOs are the Namibia Association of People with Physical Disabilities (NAPPD); the Namibian Association of Differently Abled Women (NADAWO), which focuses on the unique needs of women with disabilities; and the Namibian Federation of the Visually Impaired (NFVI), which was established in 1996 to defend the rights and address the needs of the blind and partially-sighted. Finally, the Namibian National Association of the Deaf (NNADD) represents those PWDs who are the most marginalised by their inability to interact with others by means of talking and listening. Because most of the population, including service providers and even teachers, are not familiar with sign language, or the need to teach

> *"if disabled people did not stand up for themselves, other members of society would continue to marginalise and abuse them."*

it to deaf children, many people with hearing impairments are doomed to isolation.

There are other institutions that support Namibia's DPOs indirectly: the NGO umbrella body (NANGOF); the National Society of Human Rights, which includes matters concerning disability in its annual reports; Voluntary Services Overseas (VSO), which works in partnership with them; and several more.

The University of Namibia (UNAM)

The University of Namibia has a well-established law faculty. However, the courses it offers do not include a specific programme on disability law or rights. Its human rights programme makes reference to the rights of people with disabilities, but does not cover the topic in any detail.

UNAM has a dedicated Disability Unit, which provides a working area where students with disabilities can make use of specially adapted typing and computer facilities. Although the major buildings on campus have lifts, no arrangements have been made to solve problems of access for mobility-impaired students. Consequently, disabled students spend most of their time on campus at the Unit.

The University has a disability policy that is currently under discussion, but at present neither the 'abled' students nor the academic staff are aware of what is needed to teach, or simply accept the social equality of, disabled students.

Conclusion

There can be no doubt that Namibia's government has shown the political will to support and uplift PWDs. Already it has built up a framework of policy and law intended to promote and protect the rights of the disabled. It has established a Rehabilitation Centre in the Ministry of Health and Social Services, and appointed to that ministry a person with the express function of addressing the concerns of PWDs. The Disability Unit, which is located within the office of the Prime Minister, has already succeeded in marrying some of the needs of the PWDs and the requirements of the various national and international undertakings to which the government is bound, and converting these into feasible plans of action.

It is also clear that the organisations that represent the interests of PWDs have been vocal in demanding their rights, and have been heard. One of the results of their advocacy is that the country's education policy is being reviewed, so that changes can be made to render mainstream schools more inclusive. Part of the solution to the difficulty of accommodating special educational needs within an ordinary school will be to provide children with disabilities with a caretaker to attend to these needs. At the same time, such children will benefit from participation in the mainstream activities of the school, and greater acceptance among the other pupils.

However, as this report has shown, there is an enormous gap between the country's generally benevolent policies and laws on disability, and any material improvement in the lives of PWDs. Where opportunities do open up for PWDs, some of these become the subject of cynical manipulation on the part of people who are not disabled. A case in point is their use of PWDs as fronts to secure tenders or acquire land on the basis of affirmative action policies. Once their efforts have met with success, these people 'dump' the PWD who made the achievement possible.[106]

Part of the reason for the failure to implement national policies is financial. When the government is seeking to trim the national budget, disability issues are likely to be allocated even less funding than before. However, when the government acts on behalf of PWDs, the first task in the scale of importance is education. The second is alterations to infrastructure and modes of public transport to allow people with disabilities to use these facilities. At present, even in the few cases when a ramp has been built to make it possible for a mobility-impaired person to enter a building or a precinct, it is often so poorly-constructed that it is not an aid but a hazard to people in wheelchairs.

7.

SWAZILAND

Prepared by Angelo Dube, in-country researcher

> *"fundamental rights continue to be viewed by most Swazis as foreign and anti-monarchy."*

A brief historical background of the Swazi legal system

Before describing the situation in the disability rights sector in Swaziland, the researcher considered it apt to provide some context in relation to the country's legal development over the pre-colonial, independence and post-independence eras. The reason is that certain occurrences during this long history cast light on the current approach of Swaziland's government towards human rights in general and disability rights in particular.

In pre-colonial times, the ruler of Swaziland was a king whose title to the throne was hereditary. At that time he governed by customary law. When the country was under colonial rule for more than five decades, it was administered through a hierarchy of native authorities. During this period, the king was designated a paramount chief who exercised indirect control over the Swazi nation. Throughout the era of occupation, the royal family gradually assumed authority over the allocation of land, particularly tribal land that belonged to the Swazi nation. (Today, the king's family continues to administer tribal land through a system of chieftainship.) The pre-colonial persona of the monarch eroded as the royal dynasty began to perceive itself as an institution that was God-ordained and not accountable to the people for its actions. Another alteration that occurred during the colonial era was an infusion of Roman-Dutch common law into what had been a legal system based on customary law.

The first paramount chief of the colonial era was later to become King Sobhuza II. He ruled the Swazis from 1921 until the time of his death in 1982, although the country became independent only in 1968. While he disliked political parties because he viewed them as direct threats to his authority and 'un-Swazi', the king formed his own political party, the Imbokodvo National Movement (IMN), in 1964. However, the

British insisted that independence for Swaziland would be granted only if a multi-party system were adopted, while other political formations in the country exerted internal pressure.

After a four-year period of limited self-rule, Swaziland was granted independence on 6 September 1968. It inherited a Westminster-type parliamentary system that provided for a constitutional monarchy, a prime minister and multi-party politics. The British also left behind a dual legal system comprising Roman-Dutch common law and customary law under which rural constituencies under the control of hereditary chiefs reported directly to the king. This dual legal system continues to exist in Swaziland today.

On 12 April 1973, King Sobhuza II unilaterally repealed the independence constitution by royal decree. He retained only a few of its provisions, most of them relating to the office of the Attorney General. Through the King's Proclamation to the Nation No.12, commonly referred to as the '1973 Decree', he assumed comprehensive legislative, executive and judicial powers – a situation that remained unaltered until a new constitution was adopted in June 2005. This constitution, which came into effect in February 2006, did not declare the abrogation of the 1973 Decree outright, but it asserted its supremacy and the voiding of any law inconsistent with its provisions. In theory at least, this relegated the provisions of the earlier Decree to history. However, remnants of the political perceptions of the king's party in 1973 have survived to this day: for example, fundamental rights continue to be viewed by most Swazis as foreign and anti-monarchy.

Constitutional provisions of relevance to disability rights

The current Swaziland Constitution declares that all the rights and fundamental freedoms it sets out apply to all human beings, disabled or not, by virtue of their humanity. Section 14 guarantees the following rights:

(a) respect for life, liberty, the right to a fair hearing, equality before the law and equal protection under the law;
(b) freedom of conscience, of expression and of peaceful assembly and association and of movement;
(c) protection of the privacy of the home and other property of the individual;
(d) protection from appropriation of property without compensation;
(e) protection from inhuman or degrading treatment, slavery and forced labour, arbitrary search and entry; and,
(f) respect for rights of the family, women, children, workers and persons with disabilities.

Of note is section 14(3) which touches on disability. It provides that:

A person of whatever gender, race, place of origin, political opinion, colour, religion, creed, age or disability shall be entitled to the fundamental rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest.

"Section 18 guarantees the right of every individual to be protected from inhuman or degrading treatment."

Section 18 guarantees the right of every individual to be protected from inhuman or degrading treatment, on the grounds that the dignity of the human being is inviolable.

Section 20, on equality, defines this concept as:

1. All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.
2. For the avoidance of any doubt, a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age or disability.


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“The constitution merely enjoins the state to respect the rights of PWDs and prohibits discrimination against them. It does not address the injustices visited upon PWDs in the past.”

3. For the purposes of this section, ‘discriminate’ means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, race, colour, ethnic origin, birth, tribe, creed or religion, or social or economic standing, political opinion, age or disability.

The right to a fair hearing, as contained in section 21, also has bearing on disability rights, especially where a party to litigation or criminal proceedings has a speech, hearing or seeing disability, in which case court officials are enjoined to provide people with the relevant expertise to assist the PWD involved in that particular trial.

Section 30 deals with the rights of disabled people specifically:

(a) Persons with disabilities have a right to respect and human dignity, and the government and society shall take appropriate measures to ensure that those persons realise their full mental and physical potential.
(b) Parliament shall enact laws for the protection of persons with disabilities so as to enable those persons to enjoy productive and fulfilling lives.

One notable omission in the disability rights provisions set out in the constitution concerns affirmative action. The constitution merely enjoins the state to respect the rights of PWDs and prohibits discrimination against them (and other groups who are vulnerable to unequal treatment). It does not address the injustices visited upon PWDs in the past. In contrast, the constitutional provisions on women’s participation in the political and social spheres do make allowance for positive action. In the political sphere, the participation of women as members of parliament is guaranteed by the introduction of a quota. If the percentage of women MPs is lower than that specified in the constitution, a remedial procedure is to be followed.[107] On the social front, the constitution stipulates that a woman cannot be forced to submit to a custom that she opposes as a matter of conscience.[108] Both of these innovations were intended to rectify discrimination against women. No such provisions have been made for PWDs.

Legislation in Swaziland that has bearing on disability

There are some pieces of legislation that contain clauses relating to disability rights. Most of these laws predate the constitution. The Women and Girls Protection Act 39 of 1920 seeks to punish people who have sexual intercourse with what it terms ‘female imbeciles or idiots’.[109] The purpose was to protect females with a mental disability. The Criminal Procedure and Evidence Act of 1938 provides that where a court comes to the conclusion that the accused is guilty of an offence but was insane at the time it was committed, he or she shall be incarcerated not in a prison but in a mental asylum, at the king’s pleasure. The apparently less punitive nature of this dispensation is dubious, because 'the king's pleasure' does not specify the duration of the period of confinement.[110] In general, people with a mental disability who require admission to a mental health facility are committed under a Mental Health Order.[111]

At present, Swaziland does not have a comprehensive Disability Act or disability policy.

Ratification status

Swaziland has not ratified either the Convention on the Rights of People Living with Disabilities or its Protocol, although it is signatory to both.[112] The country's DPOs are putting pressure on the Swazi government to ratify these instruments.

It is worth noting that because Swaziland is a dualist state, an international instrument like the CRPD is considered binding in law only after it has been ratified and its provisions have been domesticated – that is, made the subject of national laws.

Legislative review by government

Swaziland does not have a law reform commission. This is the reason why a large proportion of its legislation predates the constitution and is obsolete. Several of Swaziland's laws are likely to be declared unconstitutional if they are challenged in the courts.

Strategic litigation by DPOs

A quick scan of reported and on-going cases at the High Court in Swaziland revealed that no strategic litigation that relates to disability rights has been or is being brought before it. A representative of a DPO mentioned this situation during an interview and reported that activists for PWDs were attempting to sensitise legal practitioners in Swaziland to infringements of disability rights, and also to the provisions of the CRPD. However, he felt that because most lawyers tend to view their work as income-generating rather than serving any moral purpose, they would probably shy away from undertaking pro bono work.[113] Furthermore, in the political and legal climate of Swaziland, where fundamental rights have been demonised by the state, most lawyers prefer to remain politically neutral. Becoming advocates for disability rights might affect their careers.

Involvement of DPOs

Swaziland contains many civil society organisations, a number of which work in the area of human rights. One of the most prominent, which deals specifically with disability rights, is the Federation of the Disabled Swaziland (FODSWA), which has its centre of operations in Mbabane. This DPO is the umbrella body for four specialised disability organisations. The first three focus on the deaf, the visually impaired, and the physically disabled, while the fourth provides a support group made up of parents of PWDs.

FODSWA has existed since around 1982 but it has not been involved in any legislative review (as is recommended by the Convention). However, it has been organising workshops intended to make members of parliament more aware of both disability rights and the need to introduce legislation that addresses the circumstances in which PWDs live. FODSWA members also engage MPs and ministers in meetings that are geared towards promoting policy development and ratification of the Convention. The representatives of the Federation who were interviewed expressed the belief that neither the MPs nor the cabinet ministers have any knowledge of the CRPD and its provisions, which is why these members of the government feel little commitment to ratifying it. However, the government recently established a Disability Unit in the office of the Deputy Prime Minister. This apparent sign of progress is undermined by the unit's approach to disability as a mixture of the medical and the charity models, both of which have been superseded, and by the fact that the DPOs were not consulted about the appointment of the unit's focal person, who is a government official.

The umbrella body for all non-governmental organisations in the country, CANGO, does not deal with disability rights. A member of Swaziland Positive Living (SWAPOL), which focuses on empowering people living with HIV and AIDS, stated that the organisation is not working in the disability sector.

“Although the constitution makes provision for free primary education, many PWDs are not taking advantage of this opportunity.”

Participation of PWDs in the social, economic and political spheres

Owing to a general lack of access to education, PWDs are very poorly represented in all three spheres. On the political front, no avenues dedicated to disabled people exist within the government’s structures. There is a pronounced absence of PWD representation in the various committees established under constitutional or customary law. Although a blind MP, Tom Mndzebele, has recently been appointed a Senator, members of the disability sector feel he does not represent them. No DPOs were involved in lobbying for his election to the Senate, and the general opinion of PWDs is that he does not identify with their cause and is unlikely to advance disability issues in his new position. Although they were attempting to remedy this situation, their efforts to engage his support have not met with success so far.[114]

The economic participation of PWDs is very low because few PWDs have even a basic education and consequently most are unemployed. Although the constitution makes provision for free primary education, which became available in 2009 after the government was forced to comply with a court ruling, many PWDs are not taking advantage of this opportunity. The reasons are a lack of educational facilities for disabled children and adults, and the difficulties PWDs encounter in their efforts to attend mainstream schools. For example, few of the teachers in these schools have received any training in how to relate to children with disabilities.

As far as social participation is concerned, PWDs complain about the high levels of discrimination that they encounter in Swaziland. Because customary law sets disabled people apart, the perception that they are to be held at arm’s length is perpetuated in a number of ways. Disabled people are frequently treated as abnormal by those who are not disabled, and they are prevented from participating in certain national or cultural events like the reed dance (for young maidens) and lusekwane (for young boys) because of a strongly-held belief that a PWD coming into contact with a member of the royalty family will bring bad luck to either the king or the queen mother. The interviewee who described this exclusionary custom said he had been expelled from a cultural event on the grounds of his disability.[115]

The University of Swaziland

The law department at the University of Swaziland currently teaches disability rights as part of international law and human rights law. It offers no stand-alone course on disability or disability rights. The faculties of humanities and health sciences also teach courses in which disability is a subject, but these are not rights-oriented.

According to members of the Department of Law, introducing a one-year course on disability rights would involve a major reorganisation of staff. They estimated that designing such a course, obtaining approval from the University senate and consent to the appointment of additional staff members from the University’s planning committee would take two to three years.

The law faculty currently addresses disability rights in ordinary lectures. Some of the staff augment this approach by involving their students in group research, class presentations, and online discussion forums. Students who have completed the component on disability rights are encouraged to draft a communication to the African Commission on the violation of fundamental rights (including disability rights) in Swaziland. One of the lecturers in the department is planning to invite DPOs operating in the country to send guest lecturers to the faculty to address the students, so that they would be able to view disability rights from a different angle.[116]

8.

ZAMBIA

Prepared by Hermien Kotzé based on a lengthier report by
Hope Ndlovu-Chanda, in-country researcher

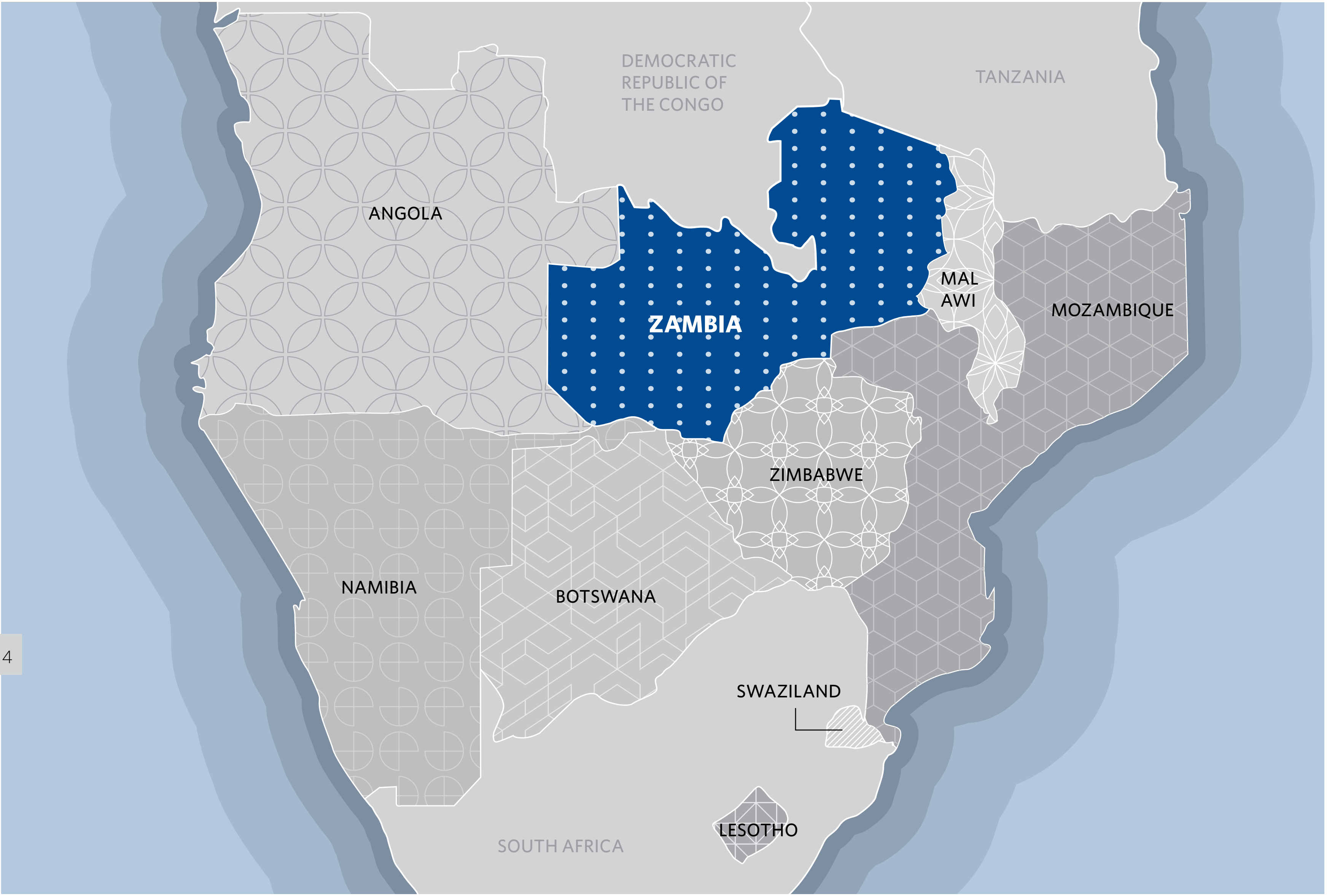
> *"Zambia is in the lowest category of human development."*

General socio-economic context

Zambia's economic growth rates have improved, poverty reduction strategies have been implemented, and the country received substantial debt relief in 2005. Nonetheless, a large percentage of the population continues to live in severe poverty and to be deprived of economic, social and cultural rights. Unemployment rates are high, and according to the UNDP Human Development Report of 2009, Zambia is in the lowest category of human development.[117] Confirmation is provided by the country's very low human welfare ratings, which include reduced access to a (nutritionally) adequate food basket,[118] child and adult malnutrition, high levels of maternal and child mortality,[119] and insufficient access to education and health facilities.

According to Zambia's CSO Living Conditions and Monitoring Survey of 2006, at least 64 percent of the country's population subsists below the national poverty line, with rural populations the most severely affected. This situation is particularly acute when the heads of households are female, people with low or no education, or elderly people (who are supposed to be able to live off their social benefits). The majority of Zambians continue to live on less than US$1 a day.

The introductory chapter of Zambia's current national development planning document, the Fifth National Development Plan (FNDP), presents an overview of the poverty levels in the country. It also reveals that the country's improved economic performance in recent years has not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SWAZILAND
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SOUTH AFRICA

translated into a significant reduction in the country's poverty levels, or improved the social and economic status of the average Zambian.

Even though many new investors have arrived in Zambia and the country's mines have been re-opened and privatised, the economic landscape in general is characterised by high unemployment and casualization of labour. Violation of employment and labour-related rights is common. Most small-scale farmers, women in particular, have been badly affected by the country's poor road network, inadequate storage facilities, and their lack of access to extension services and market information. The liberalisation of the agriculture sector has also made it more difficult for them to earn livelihoods. It appears that at present Zambia is suffering from the aftershocks of structural adjustment programmes, which include increased poverty and unemployment, reduced social and welfare services, more expensive health care, and deleterious effects on rural development in general.

As has been discussed at length in main report, PWDs are among those worst affected by negative socio-economic conditions. Supporting evidence was given in interviews with PWDs and members of the organisations that represent them (DPOs). The difficulties faced by PWDs include stigmatisation and social exclusion; physical barriers to mobility and access to public buildings; and the more complex impediments to their enjoying essential services such as education and health care, which in turn affect their chance of finding jobs. These, combined with the hardships caused by neo-liberal economic policies, have put a very heavy burden on PWDs in Zambia.

> *"the economic landscape in general is characterised by high unemployment and casualization of labour."*

The current situation in the country does not provide a context within which disability rights and the socio-economic entitlements of PWDs are likely to be paid much attention. When times are bad, whether as a result of wars or economic and political crises, the most vulnerable people are bound to suffer the worst consequences. This has been a clearly distinguishable trend with regard to PWDs in countries like Angola, Mozambique and Zimbabwe.

The FNDP reports that PWDs are numerous throughout Zambia, and occur at all levels of society. According to the World Health Organisation (WHO), PWDs constitute 10–20 percent of the population of most countries, which would mean that Zambia's disabled population is about 1–2 million. To a large extent, disability in Zambia is still regarded as requiring a charitable response. Traditionally, the responsibility for supporting PWDs has fallen on the family and government intervention, where it has existed, has often been channelled through welfare policies. Very little commitment has been shown at national level to addressing the causes and consequences of disability, and the generally unequal status of PWDs in Zambian society.

However, it appears that the FNDP has made some headway towards realising that, if any progress in the struggle towards achieving equal opportunities for PWDs is to be achieved, their rights and needs must be addressed in all pieces of legislation and development plans at every level of society. On the other hand, the FNDP mid-term review report published by the government contains no information on whether the objectives relating to disability and development in the Plan are being implemented, or what progress has been made on this matter by the government.[120]

Zambia's legislative provisions

Zambia is signatory to all the major international human rights treaties, including the International Covenant on Civil and Political Rights and its First Optional Protocol; the International Covenant on Economic Social and Cultural Rights; and the African Protocol on the Rights of Women. The country has also signed most of the ILO Conventions. The constitution of Zambia follows a dualist system, in terms of which international treaty law is regarded as separate from the internal legal system. Therefore, international and regional treaties are not directly applicable in Zambia until their provisions have been incorporated into Zambia's domestic legislation. Furthermore, there is at present no legal obligation on the government to interpret national laws in conformity with its obligations under these international agreements, although by ratifying them it undertakes to implement the rights and freedoms enshrined in those instruments in good faith.

The courts in Zambia are expected to follow the Bangalore Principles on the Application of International Human Rights Norms to the Domestic Legal System, which have been adopted by leading judges and jurists in Commonwealth countries. According to the Principles, international human rights norms can be used in domestic courts in instances where the common law is insufficient or where a local statute is ambiguous. The judge may then fill the gap or resolve the ambiguity by reference to international human rights jurisprudence, which will ensure that the domestic law conforms as far as possible with such principles. In practice, very few judges or lawyers in Zambia have taken international human rights law into account, although recently they have shown a greater tendency to do so, especially in relation to civil and political rights.

Part III of the Zambian Constitution contains a justiciable bill of rights that confines itself to the civil and political, and even these rights are subject to a number of limitations. Zambia is currently undergoing a constitutional review process, which is being carried out by the National Constitutional Conference (NCC). Its Human Rights Committee comprises members of parliament, representatives of national and statutory bodies, and people working for various civil society organisations, including DPOs. References to the importance of their participation in this review process were made by most of the representatives of DPOs who were interviewed. The draft of the new constitution contains provisions that include protection of the rights of PWDs.

Like a number of other countries, Zambia recognises economic, social and cultural rights in Part IX of the current constitution, under 'Directive Principles of State Policy'. These provisions are advisory rather than enforceable, as they merely require governments to create an environment in which these rights are recognised by incorporating them into their planning and programming processes. Their purpose is merely to guide the executive, legislature and the judiciary in the performance of their functions. They tend to be applied directly only when the Cabinet decides that the interests of the public demand it and that state resources allow it.

The Principles require the state to endeavour to create conditions under which all citizens shall be able to enjoy:

- adequate access to means of livelihood and employment;
- clean water and adequate medical and health facilities and amenities;
- equal and adequate educational opportunities in all fields and at all levels universally;
- the practice, enjoyment and development by any person of that person's culture, tradition, custom or language in so far as these are not inconsistent with the constitution;
- a clean and healthy living environment; and
- recognition of the right of every person to fair labour practices and safe and healthy working conditions.

Ratification, application and domestication of the CRPD

Zambia ratified the CRPD in May 2009 without reservation. As discussed in some detail above, there is no necessary identity between Zambia's accepting international and regional conventions and applying their provisions in its domestic legal system. However, the courts are expected to follow the Bangalore Principles131 while applying domestic statutory law (following the common law system) and African customary law. The latter is usually considered applicable to matters of personal law on condition that custom does not conflict with the principles of natural justice.

Responsibility for the domestication of the various international human rights instruments to which Zambia is signatory does not rest with one ministry. The normal practice is that the ministry most concerned with the subject-matter of a specific treaty will be expected to undertake the process of incorporating its provisions into Zambian law. The Ministry of Community Development and Social Services was therefore put in charge of subsuming the CRPD into the national legislative framework. The Domestication Technical Team appointed in April 2010 comprises representatives from government departments, DPOs, the ILO and the Human Rights Commission. Its primary task is to identify gaps in the current law and to draw on lessons from other countries to make recommendations on how certain provisions of the CRPD can be used to remedy these deficiencies. At a certain point the technical team is expected to present its findings at a consultative workshop that will be attended by a large number of interested parties.

Domestic legislation relating to persons with disabilities

The most important piece of legislation for PWDs in Zambia is the Persons with Disabilities Act in Chapter 65 of the Laws of Zambia.[121] Enacted in 1996, it establishes the Zambia Agency for Persons with Disabilities (ZAPD), defines its functions, and also establishes the National Trust Fund for persons with disabilities.

The ZAPD comprises:

(a) eight representatives of associations of, or for, PWDs;
(b) a representative of the ministry responsible for science and technology;
(c) a representative of the ministry responsible for community development and social welfare;
(d) a representative of the Zambia Chambers of Commerce and Industry;
(e) a representative of the ministry responsible for finance;
(f) a representative of the ministry responsible for education;
(g) a representative of the ministry responsible for health;
(h) a representative of the Attorney-General; and,
(i) two members appointed by the Minister.

Its functions are to:

(a) plan, promote and administer services for all categories of PWD;
(b) keep statistical records relating to incidences and causes of disabilities, which may be used for the planning, promotion, administration and evaluation of services for PWD;
(c) maintain a register of PWDs;
(d) provide rehabilitation, training, and welfare services to PWDs;
(e) promote research into general rehabilitation programmes for PWDs;
(f) raise public awareness concerning the prevention of disabilities and the care of PWDs;
(g) co-operate with ministries and other organisations in the provision of preventive, educational, training, employment, rehabilitation and other welfare services for PWDs;
(h) co-ordinate rehabilitation and welfare services provided to PWDs by ministries and voluntary associations;
(i) monitor and supervise the provision of services to PWDs;
(j) promote, directly and indirectly, the development of human resources to work towards the prevention of disabilities and provide rehabilitation, education and training to improve the general welfare PWDs;
(k) advise the Minister on matters relating to the social and economic development and the general well-being of PWDs; and,
(l) do all such things as are incidental to or conductive to the attainment of the functions of the Agency.

The Act also prohibits acts of discrimination in relation to employment and admission to educational institutions. It makes provision for a tax rebate for any people registered under the Act who employ at least three PWDs at a rate to be determined according to statute by the minister responsible for finance. This rebate is also available to any people who adapt their premises or services to make them accessible to PWDs (in compliance with an adjustment order issued by the Zambia Agency for Persons with Disabilities, which is empowered to issue such an order to any person whose premises, amenities or services are considered unusable by PWDs).

According to the FNDP, the Act has not been enforced. Violations are rarely recognised, a situation that the DPO community attributes to widespread ignorance of the Act's provisions.

Recently, the Ministry of Community Development and Social Services (MCDSS) produced a national policy on disability. However, no implementation plan has been issued.

Legislative review

A legislative audit has been undertaken by an advisory committee for Promoting the Employability and Employment of People with Disabilities through Effective Legislation (PEPDEL). The committee is made up of representatives of relevant government agencies, international bodies such as the ILO, and trade unions. The objective of the audit is to provide insight into legislation relating to the education, vocational training and employment of PWDs in Zambia, especially in the context of the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) and the CRPD.

Mainstreaming disability issues

Because Zambia has only recently ratified the CRPD, the government has not yet established any of the dedicated monitoring mechanisms envisaged in the Convention. The country's Human Rights Commission has a broad mandate to protect and promote the rights of all people in Zambia, including PWDs, by various means, which include overseeing the implementation of treaty provisions and recommendations. However, the Commission has not exercised any supervision over the administration's actions on behalf of PWDs. The government has appointed and trained disability focal points in all its line ministries and statutory bodies such as Commissions. Members of DPOs tended to be sceptical about their usefulness, as they believed the focal points-designate understand very little about either disability issues or the new perspectives on disability rights introduced by the CRPD.

Strategic litigation

The Zambia Federation for Disability Organisations (ZAFOD), the country's DPO umbrella body, has undertaken several cases of strategic litigation. These have been described in detail in Chapter 3 of the main research report.

Government funding for disability issues and organisations

The Zambian government approved the funding shown below for institutions working with disability under the aegis of the Ministry of Community Development and Social Services in its budget for 2010.

NO.	Name of Institution	Amount Approved & Allocated (ZMK)	Amount Approved & Allocated (US$) @ K4,700.00 per US$
1.	National Training Centre for the Disabled	50,672,851.00	10,781.46
2.	National Trust Fund for the Disabled	550,000,000.00	117,021.28
3.	Zambia Agency for Persons with Disabilities	5,000,000,000.00	1,063,829.79
4.	Zambia National Library and Cultural Centre for the Blind	400,000,000.00	85,106.38

DPOs in Zambia

In general, the situation of DPOs in Zambia is typical of those pertaining for all the other DPOs in the region. As this subject has been covered at length in the accompanying document, it should suffice that in Zambia there is an exceptionally large gap in capacity and resources between the umbrella body and its affiliate DPOs. The latter generally struggle for survival because they lack staff and financial support. ZAFOD, on the other hand, appears to be extremely active and influential with competent staff and sufficient funding. It is in a league of its own in the region because it can already boast a number of successes in strategic litigation cases, and is involved at a high level in national political and development planning processes and legal reviews and reforms. It has also been working to promote the CRPD in all its aspects, from lobbying for its ratification to setting up monitoring and evaluation mechanisms to monitor its implementation. ZAFOD is also advocating the inclusion of disability rights in the new draft constitution. Interestingly, another project advocated by ZAFOD has been the incorporation of disability issues into the courses taught at law schools and schools of humanities in the country's tertiary institutions. At the time of the interview (July 2010), ZAFOD was preparing a proposal on how disability issues can be integrated into all relevant courses, as has already been done with gender issues.

ZAFOD has a specialist fundraising committee, and receives funds from a range of donors, among them the European Union, Power International, Action for Disability and Development (ADD), the Norwegian Association for Disabled and Power for Good.

Apart from the disability organisations established by the government (see above), other DPOs in the country include the Zambia National Federation of the Blind, Zambia Deaf Vision and the Zambia Association for Women with Disabilities. Representatives of the last two were interviewed for this research project. The international DPO ADD has an office in Lusaka.

University of Zambia, School of Law

The University's School of Law does not offer any specific programme or course on disability rights. A general human rights course forms part of the undergraduate law curriculum but it does not cover any aspect of disability rights. The postgraduate diploma in human rights that was once offered by the school has lapsed. The School of Humanities and Social Sciences has no courses relating to disability.

The sponsors of the PEPDEL project and the University of Zambia have signed a Memorandum of Understanding, which includes incorporating disability topics in the human rights course for undergraduates.

> *"A general human rights course forms part of the undergraduate law curriculum but it does not cover any aspect of disability rights."*

Open University of Zambia

The researchers also interviewed a member of the law school at the Open University of Zambia, who reported that the school does not provide any courses on disability rights (although it teaches human rights law) but would welcome the proposed initiative.


DEMOCRATIC REPUBLIC OF THE CONGO
TANZANIA
ANGOLA
ZAMBIA
MALAWI
MOZAMBIQUE
ZIMBABWE
NAMIBIA
BOTSWANA
SWAZILAND
LESOTHO
SOUTH AFRICA

9. ZIMBABWE

(Prepared by Revai Makanje Aalbaek,
in-country researcher)

> *“PWDs in Zimbabwe are ill-treated, stigmatised and discriminated against by other members of society.”*

Introduction

There are an estimated one million people living with disabilities in Zimbabwe. The major causes of disability in Zimbabwe are cited as genetic and congenital, but disease, accidents and malnutrition also swell the ranks of the disabled. As in other parts of the world, PWDs in Zimbabwe are ill-treated, stigmatised and discriminated against by other members of society. The observation and protection of the rights of PWDs has been relegated to the periphery of national debate, politics, legislation, polices and programmes, because disability issues rank very low on the list of government priorities.

It is for this reason that the National Association of Societies for the Handicapped (NASCOH) has spent the past 10 years working on advocating for the protection of the rights of disabled people and engaging with politicians and policymakers, rather than simply focusing on the welfare of PWDs. Through their work and that of member organisations, significant progress has been made. Zimbabwe now has well over 50 national and community-based organisations addressing disability issues. Many are devoting their efforts to improving the daily lives of PWDs by initiating income-generating projects and providing rehabilitation and other support. A few, most of them umbrella bodies like NASCOH, SAFOD and the National Council of the Disabled, are working at both local and national levels to promote the rights of PWDs on a broader front.

The CRPD

Zimbabwe has not ratified the CRPD, despite advocacy on the part of NASCOH to persuade the government of Zimbabwe to do so. Although little progress has been made so far, NASCOH and various DPOs have been encouraged by the cooperative attitude of the Ministry of Labour and Social Service, which is one of the ministries responsible for issues concerning PWDs. This positive attitude has been interpreted as a sign of goodwill and political commitment, which in turn might lead to ratification of the Convention in the near future.

However, even if Zimbabwe were to ratify it, the Convention would not become immediately applicable in the local context, as section 111B of the Zimbabwe Constitution states that international treaties and agreements do not become part of the laws of Zimbabwe unless specifically incorporated through an Act of Parliament, because the country has a dualist legal system. In the current and on-going constitutional reform process, many NGOs focusing on human rights are fighting both for the removal of this clause and for the legal system to become monist, in which case international human rights instruments ratified by Zimbabwe would immediately become law domestically.

The Zimbabwe Constitution

Zimbabwe already has legislation and policies relating to disabled people. However, these are fragmented and do not provide meaningful protection for the rights of PWDs.

The Zimbabwe Constitution of 1980 did not make any mention of disability. However, in 2006 an amendment (Number 18, section 23) to the constitution outlawed discrimination against people on the grounds of disability. This was a great advance towards creating a national human rights framework for PWDs. Generally the constitution now allows for positive discrimination in favour of all disadvantaged groups, including PWDs. However, the degree to which these recently enacted provisions will protect the rights of PWDs has yet to be demonstrated, but they provide a good opportunity for DPOs to test cases and initiate strategic litigation in instances where rights have been violated.

> *“Zimbabwe already has legislation and policies relating to disabled people. However, these are fragmented and do not provide meaningful protection for the rights of PWDs.”*

Domestic legislation relating to disability

Disabled Persons Act

The Disabled Persons Act (DPA) of 1992 is the most important legal instrument for the disabled. (Zimbabwe was one of the first countries in Africa to enact legislation that deals specifically with the rights of PWDs.) The DPA defined disability, set up the National Disability Board, and established the functions of the Board. It also created two directors, one for the Welfare of Disabled Persons and another for Disabled Persons Affairs.

The Director of Disabled Persons Affairs, acting under the guidance of the Board, takes responsibility for formulating and developing measures and policies that are designed:

(a) to create equal opportunities for disabled persons by ensuring, so far as possible, that they obtain education and employment, participate fully in sporting, recreation and cultural activities, and are afforded full access to community and social services;
(b) to enable disabled persons, so far as possible, to lead independent lives; and

(c) to give effect to any international treaty or agreement relating to the welfare or rehabilitation of disabled persons to which Zimbabwe is a party.

The last point is critical, as it gives the Director the opportunity to develop policy, legislation and programmes that conform with the CRPD. He or she is also responsible, under the DPA, for coordinating those services provided in Zimbabwe for the welfare and rehabilitation of disabled people; constantly reviewing the measures that have been adopted to promote the welfare and rehabilitation of disabled people; and re-assessing and evaluating them in the light of how effective they have proved to be. However, the position of Director has been vacant for many years, so none of these functions is being carried out.

It is apparent from the language of the Act that the approach it follows belongs to the welfare and rehabilitation model rather than the more progressive approach concerned with the protection and promotion of PWD rights.

A few provisions of the Act allude indirectly to certain rights. For example, Section 8 (1) states that no disabled person shall on the ground of his [or her] disability alone be denied:

(a) admission into any premises to which members of the public are ordinarily allowed entry; and
(b) provision of any service or amenity ordinarily provided to members of the public, unless such denial is motivated by a genuine concern for the safety of that disabled person.

Another section of the Act deals with outlawing discrimination against PWDs in the job market and in the workplace. However, this is not clearly articulated.

In terms of government responsibility, disability issues fall under two ministries – Labour and Social Services, and Health and Child Welfare. This is a clear demonstration of the approach to disability in terms of welfare instead of rights and entitlements.

Overall, the provisions of the DPA, when compared with the standards set in acknowledging the rights of PWDs in the CRPD, fall far short. Its limitations can be summarised in two categories – those relating to the content of the Act and those relating to its application in Zimbabwe. As far as the former is concerned:

(a) the focus of the Act is not really on PWDs themselves, but on the structures that deal with them;
(b) the definition of disabled persons is not sufficiently comprehensive; and,
(c) the rights of PWDs are given minimal coverage, and the focus is restricted to employment, access to buildings and outlawing discrimination generally, while even these concessions are undermined by claw-back clauses.

Meanwhile, the implementation of the DPA in Zimbabwe is constrained on a number of fronts:

(a) The office of the Director for Disabled Persons Affairs has been vacant for nearly a decade, and no budget is allocated to this position;
(b) The composition of the national Disability Board does not include a sufficient number of PWD representatives, or ensure that there is a gender balance;
(c) The functions of the Board do not follow the principle of consultation with PWDs and there are no specific budgetary allocations to particular programmes; and,
(d) Issues specific to women living with disabilities are not addressed by the Board.

The DPA's provisions stop short of outlining concrete measures to protect the rights of PWDs, or of committing the government to ensuring that those rights of PWDs it does cover are acted upon. It gives no guidance on how positive discrimination can be used to improve the lives of PWDs, and assumes that disabilities affect men and women in the same ways. No mention is made of issues that affect women with disabilities particularly, such as access to sexual and reproductive health information and facilities. The vulnerability of women living with disabilities to violence, sexual harassment and exploitation is not addressed in the DPA.

The Education Act

Section 4 of the Education Act guarantees the right to education of every child. Although the Act specifies that there should be no discrimination in the education system between children on grounds such as gender and race, disability is not included in the list. DPOs in Zimbabwe recommend that the Act should be amended to protect the right to education of children with disabilities and PWDs in general. Furthermore, they argue that the state should bear the responsibility of ensuring that children and PWDs have reasonable access to educational facilities that are equipped to meet their needs. At present, the literacy statistics in Zimbabwe show that most PWDs are barely literate.

The Labour Act

Until 2002, when it was amended, the Labour Act made no mention of discrimination against PWDs by employers. The amendment prohibited discrimination on the grounds of disability (as defined by the Disabled Persons Act), which was the result of advocacy carried out by DPOs. However, there is no documentation to indicate to what degree this amendment is being applied by employers. Given that unemployment in Zimbabwe is currently estimated at 80–90 percent, PWDs are in competition with many other work-seekers, and are therefore at a greater disadvantage than before. Another factor inimical to their finding jobs is that employers consider PWDs a source of additional expense.

The Mental Health Act

The Mental Health Act does not extend its provisions to PWDs with mental disability, does not articulate the rights of PWDs, and fails to commit the government to finding specific means of implementing these rights.

The Children's Act

The Children's Act deals mainly with the welfare of children, particularly in protecting them from violations such as child prostitution, child labour, and all forms of abuse, whether by parents, guardians, or other members of society. Its coverage of children's rights is comprehensive. It sets up a children's court and other administrative structures that are involved in the protection of children's rights. However, the Children's Act does not make any specific reference to the rights of the most vulnerable children – those living with disabilities – even though there is ample evidence of the kinds of human rights abuses such children face. This legislation needs to be amended to remedy the omission and so that the state accepts an obligation to protect the rights of disabled children as well.

Contextual analysis of the position of PWDs in Zimbabwe

Political representation

The first PWD to be made a member of Zimbabwe's Parliament was appointed by the president in 1995. However, after the elections in 2000, when the political position of the president and his party, ZANU-PF, was threatened by the opposition MDC, the president did not appoint another disabled MP. This indicates that any provisions for the inclusion and participation of PWDs that are not supported by the necessary structures cannot be relied on, as they are subject to political expediency. In 2005, a member of ZANU-PF with a disability was made a Senator, but he was the only PWD serving in the legislature. However, about three years ago, the president installed a Disability Advisor. The representatives of Zimbabwean DPOs who were interviewed claimed that they work closely with this person. Although he is a political appointee, the advisor could be extremely useful to DPOs, especially in lobbying for the ratification of the CRPD.

Some significant headway has been made in other areas through the election of PWDs onto public boards, among them the assignment of a visually impaired man to the government's ICT board, and the appointment of a physically disabled man to chair the Media Commission. These advances are largely attributable to the advocacy of DPOs. Both NASCOH and the British Department for International Development (DFID) are currently working in partnership to strengthen the inclusion of PWDs in governance at all levels of society by offering a programme called ‘Enfranchising people with disabilities to exercise their rights to vote and facilitating their inclusion in governance’. The aim of this programme is to encourage PWDs to take positive action to claim their rights, especially by demanding that they participate in all decisions that affect them.

Primary, secondary and tertiary education

The School of Social and Psychological Services and Special Education is a government department with a mandate to ensure that the needs of PWDs are catered for in the education system. This is done through service support and teacher training in the varying educational needs of the disabled. In Zimbabwe, there are both government and private schools that offer teaching specific to PWDs. However, the low the literacy rates of PWDs are clear testimony that the education system is failing disabled children. The statistics also indicate that PWDs are less likely to complete primary education than ‘abled’ children, and that illiteracy in women is higher than that in men.

Many of the different colleges and universities in the country have disability service centres, which provide for the needs of students with disabilities, and make every effort to create a helpful learning environment for them. However, the economic meltdown that has occurred over the past 10 years caused a massive deterioration in the education system in Zimbabwe, which also hit students with disabilities very hard. Educational facilities that were once world-class no longer have any such claim. None of the universities in Zimbabwe offer disability rights as a course in their academic curricula, not even in their law schools,

Health issues and in particular HIV and AIDS

Zimbabwe has had alarmingly high HIV rates, but over the last few years these have fallen from about 25 to 13 percent of the adult population. Despite this drop, this remains an unacceptably high figure. For many reasons, PWDs have been some of the most seriously affected by the HIV pandemic. Key reasons include lack of access to HIV and AIDS information, especially for the visually impaired and the hard of hearing, while many PWDs, especially destitute women who live in urban and peri-urban areas, have been victims of sexual abuse that has exposed them to HIV infection. Another reason is that providers of sex education perceive disabled people as asexual, and therefore assume that they do not require advice on safe sex, contraceptives and so on. For men seeking sex, disabled females are also seen as ‘safe’ targets – safe in the dual sense that they are assumed to have no sexual experience, and are rarely in a position to defend themselves or bring the perpetrator to book. This mind-set accounts for the frequency with which mentally ill young girls and women are raped. The sexuality of PWDs is misunderstood, unrecognised and in some cases dismissed outright by society.

Test case litigation

In January 2010, an organisation representing the visually impaired won a constitutional challenge against the Zimbabwe Electoral Commission. The Supreme Court chief justice nullified sections of the Electoral Act, which mandates assisted voting for the visually impaired, on the grounds that it infringes the rights of the voter. When the provisions of the Act were applied in practice in the 2008 elections, they resulted in the visually impaired being assisted to vote by representatives of political parties contesting the elections, presiding officers at p olling stations, police officers and employees from the electoral commission. This practice clearly violated their voting rights, especially the right to vote in privacy.

DPOs interviewed

- Federation of Disabled Persons Organisations in Zimbabwe
- Disabled Women’s Support Group
- Zimbabwe Parents of Handicapped Children’s Association
- Some funding partners of Zimbabwe’s DPOs
- USAID–ZADF PACT
- MS Zimbabwe Action
- Aid Zimbabwe
- European Union
- ABILAS (Finnish official aid)
- UNIFEM
- Mercy Corps
- DFID

Endnotes

Chapter 1 - Angola

1. *League for the Support of the Disabled (LARDEF), www.ddpuk.org/lardef*

2. *Although the lack of access to services was stressed in most interviews, it was most clearly articulated by Ivo de Jesus of LARDEF. Interviewed by Lúcia de Silveira, Luanda, 22 July 2010.*

3. *For more detail, see the 2009 Human Rights Report: Angola, Bureau of Democracy, Human Rights, and Labor, 2009 Country Reports on Human Rights Practices, March 11, 2010, pp.2–26.*

4. *António Eduardo, Instituto João Paulo II, interviewed by Lúcia de Silveira, Luanda, 8 July 2010.*

5. *Identity protected.*

6. *Ministry of Social Assistance and Reintegration (MINARS) interview, conducted by Lúcia de Silveira, 8 July 2010.*

7. *Ibid.*

8. *See www.ddpuk.org/lardef*

9. *António Eduardo, Instituto João Paulo II, cit.*

10. *Nsimba S. Paxe of the Intersectoral Commission for Demining and Assistance to Victims (ACNIDAH), Interviewed by Lúcia de Silveira, Luanda, July 2010.*

11. *LARDEF interview, cit.*

12. *ACNIDAH interview, cit.*

13. *Ibid. At present there are only 11 orthopedic centres in a country of 18 provinces.*

14. *Ibid.*

15. *Interviewed by Lucia de Silveira, Luanda, 8 July 2010.*

16. *LARDEF interview, cit.*

17. *Interviewed by Lucia de Silveira, July 2010.*

18. *MINARS interview, cit.*

19. *Interviewed by Lucia de Silveira, Luanda, 2 July 2010.*

20. *Instituto João Paulo II interview, cit.*

21. *Professor Benja Satula, Law Faculty, Universidade Católica de Angola; and Dr. André Victor, vice-Dean of the Faculty of Law, Universidade Agostinho Neto. Both were interviewed by Lucia de Silveira, July 2010.*

22. *NPA interview, cit.*

23. *MINARS interview, cit.*

24. *Interview with two representatives of FAPED, conducted by the author at a workshop held in Maputo, 26 May 2010.*

25. *MINARS interview, cit.*

26. *NPA interview, cit.*

27. *ACNIDAH interview, cit.*

28. *NPA interview, cit.*

29. *Ibid.*

30. *Ibid.*

31. *LARDEF interview, cit.*

32. *Identities protected in all three cases.*

33. *LARDEF interview, cit.*

34. *NPA interview, cit.*

35. *Ibid.*

36. *Interviewed briefly by the author in Maputo. Attempts by the in-country researcher to obtain a full interview failed. After several appointments had been postponed, she was forced by a research deadline to abandon the attempt.*

37. *All interviews, apart from that with FAPED, were conducted by Lucia de Silveira, Luanda, July 2010.*

38. *This clause provided for former combatants only. Other persons suffering from disability were not included. In the interview granted the researcher by the President of AMMIGA, it became clear that his approach focused solely on the need to provide attention and treatment to struggle veterans.*

39. *Article 48 of the Constitution. National Liberation Struggle combatants who were physically and mentally disabled as a result of the war enjoy special protection, to be determined by law, as do the minor children of citizens who died as a result of the conflict.*

Chapter 2 - Botswana

40. *F. Mégret, 'The disabilities Convention: Human rights of persons dealing with disabilities or disability rights?'(undated) p. 9. < http://ssrn.com/abstract=1267723> (30 October 2008)*

41. *Ibid.*

42. *L. Nyirinkindi, 2006, 'A critical analysis of paradigms and rights in disability discourses', East African Journal of Peace & Human Rights, pp. 49–50.*

43. *H. Onoria, 2007, 'Guaranteeing the right to adequate housing and shelter in Uganda: The case of women and people with disabilities', HURIPEC working paper.*

44. *Multi-sectoral Policy para.1.4.*

45. *Interview with Sekgabo Ramsay, Executive Secretary, BCD, conducted by Hermien Kotzé, Gaberone, 18 May 2010.*

46. *Ibid.*

47. *Draft Reviewed Policy (2010), under the section Application of Policy.*

48. *http://www.gov.bw/en/PrintingVersion/?printid=2827*

49. *Interview with Thomas Timmy Motingwa, Coordinator of the Disability Unit in the President's Office, conducted by Hermien Kotzé, 19 May 2010.*

50. *BCD interview, op cit.*

51. *Ibid. The lead researcher is in possession of a hard copy of the organisational profile of BCD.*

52. *All information on services provided come from the BCD Profile document.*

53. *BCD interview, cit.*

54. *Interview with Phillimon Simwaba and Robert Sinyinza, DHAT, Gaberone. Interview conducted by Hermien Kotzé, 18 May 2010. Information extracted from the DHAT brochure.*

55. *Mentioned in the interview with Mr Motingwa from the Disability Unit in the President's Office, cit.*

56. *Interview conducted by Hermien Kotzé, May 2010.*

57. *See http://www.ub.bw/info.cfm?pid=967*

Chapter 3 - Lesotho

58. *Matlosa, L. & Matobo, T, 2007, 'The education system in Lesotho: Social inclusion and exclusion of visually impaired and hearing impaired persons in the institutions of higher learning', Review of Southern African Studies, Vol. 5, No. 1 & 2, pp. 191–211.*
59. *Kingdom of Lesotho: Ministry of Health and Social Welfare, 2008.*
60. *Matlosa & Matobo, op. cit.*
61. *Department of Theology and Religious Studies, 2009.*
62. *Op. cit.*
63. *National University of Lesotho. 2006. National University of Lesotho 2006/07 Calendar, p 210.*

Chapter 4 - Malawi

64. *This figure was quoted by Charles Khaula of the Association of Physically Disabled. It is based on the findings of a SINTEF study in Malawi. SINTEF, Stiftelsen for industriell og teknisk forskning, is an independent Norwegian research company.*
65. *This situation was referred to in all the DPO interviews that took place in Malawi. See the list of the DPOs who took part at the end of this country report.*
66. *Ibid.*
67. *This was a response common to all the DPO interviewees.*
68. *http://www.un.org/disabilities/countries*
69. *Jere, Victor, 2008, 'The Right to Equality in the Workplace for People with Physical Disabilities: Does the Convention on the Rights of People with Disabilities offer any hope?' Centre for Human Rights, Pretoria University, LLM dissertation, pp. 22–23*
70. *For more detail, see ibid. p.23.*
71. *Ibid.*
72. *Ibid. pp.24–25.*
73. *Information obtained during Victor Jere's interview with the Chief Disability Officer in the Ministry of Persons with Disabilities and the Elderly, May 2010.*
74. *Ibid.*
75. *Initial discussion with FEDOMA, conducted by Victor Jere.*
76. *Ibid.*
77. *Interviews with Charles Khaula of the Association of the Physically Disabled.*

Chapter 5 - Mozambique

78. *SINTEF Mozambique study, 2009.*
79. *Mozambique Education Report, 2008. 'Disability, Education and Health Care: From Policy to Implementation', The Secretariat of the African decade on Persons with Disabilities.*
80. *Ibid.*
81. *Disability Rights in Mozambique, 2009*
82. *MMAS interview conducted by Ludmila Manuela, 8 July 2010*
83. *http://gpdd-online.org/news/inclusive_prsp_project_launch.php (accessed on 12 May 2010)*
84. *Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities, 2009.*
85. *Section 35 of the Constitution, 2004.*
86. *Farida Gulamo, PowerPoint presentation, 'The Mozambican legal framework on the rights of PWDs, OSISA Workshop on Disability Rights and Law Schools, Maputo, 26 May 2010.*
87. *Information based on various interviews with persons, including representatives of Handicap International and MINARS, conducted by Ludmila Manuela, July 2010.*
88. *Gulamo presentation, cit.*
89. *Ibid.*
90. *Ibid.*
91. *Policy for People with Disabilities, 1999, Section 1.3.*
92. *Research report by Disability and Development Partners (DDP), April 2008, 'Disability and HIV & AIDS in Mozambique', p.8.*
93. *Ibid.*
94. *Ibid.*
95. *Ibid. p.8.*
96. *Interview with Handicap International.*
97. *www.portaldogoverno.gov.mz (accessed on 21 April 2010)*
98. *Disability Rights in Mozambique (2009)*
99. *Interview with Ricardo Moresse, FAMOD, conducted by Ludmila Manuela, July 2010.*
100. *www.portaldogoverno.gov.mz (accessed on 21 April 2010)*
101. *Act 1 of 1990.*
102. *Legislation concerning special protection for vulnerable groups that was passed before the 2004 Act includes the Aged Persons Act 81 of 1967 and the Blind Person's Act 26 of 1968.*

Chapter 6 - Namibia

103. *In terms of article 32(6)'The president shall have the power to appoint as members of the National Assembly but without any vote therein, not more than six persons by virtue of their special expertise, status, skill or experience'.*
104. *Interview with Tjiueza Tjombumbi of the Disability Unit in the office of the Prime Minister by Yvonne Dausab, 12 May 2010.*
105. *During an interview with Pamela Somses, the mother of a physically disabled but very intelligent boy, she reported that Van Rhyn Primary School continually sent her child on to special schools because of his need for constant physical care.*
106. *See Voice on Disability Issues, 7, vol. 3, July 2009, which is the official publication of the National Federation of People with Disabilities in Namibia.*

Chapter 7 - Swaziland

107. *See section 86 of the Constitution.*
108. *See section 28(3) of the Constitution.*
109. *Section 4, Women and Girls Protection Act.*
110. *See section 165 of the Criminal Procedure and Evidence Act, No. 39 of 1938.*
111. *No.20 of 1978.*
112. *Swaziland signed both instruments on 25 September 2007.*
113. *Interview with a representative of the Federation of Organisations of the Disabled Swaziland (FODSWA), conducted by Angelo Dube, 20 May 2010.*
114. *Interview with FODSWA's Bheki Jele, Mbabane, Swaziland, 10 May 2010.*
115. *Ibid.*
116. *Interview conducted on 20 May 2010 with the Head of Department for Law, Simphiwe N. Shabangu*

Chapter 8 - Zambia

117. *UNDP Human Development Index 2009 http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf*
118. *Ibid*
119. *Ibid*
120. *Republic of Zambia, Fifth National Development Plan, 2006-2010 www.undp.org.zm/joomla/attachments/033_zambia_fndp.pdf*
121. *People with Disabilities Act Chapter 65*

http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004849.pdf

The Open Society Foundation for South Africa's strategy is to support and engage in activities that focus on the delivery of a needed service. In doing so it has decided it will act in a limited number of priority areas and with projects which will initiate change and produce demonstrable results within two years; seek major ventures or fresh ideas that would not see the light of day without the resources and assistance of the Foundation; and, seek to act in co-ordination and co-operation with other organisations and funding agencies to ensure that resources are optimally used. The Foundation will seek to ensure that in its work all projects should have an ongoing institution-building impact; an emphasis on sustainability; and, a mutually reinforcing impact wherever possible.

The Open Society Foundations Disability Rights Initiative seeks to address discrimination against people with disabilities and promote their inclusion in society by supporting a rights-based approach to disability. Building on the momentum and opportunity created by the UN Convention on the Rights of Persons with Disabilities (CRPD), the initiative supports civil society to build networks and mobilize campaigns that advance disability rights through advocacy for ratification and for implementation of this new human rights instrument. The program provides funding for national and global advocacy efforts that galvanize constituencies and engage new partners to develop rights-based strategies to implement the CRPD. The initiative gives priority to efforts that envision collaboration across movements and sectors, combine monitoring and documentation with advocacy and litigation, and seek to strengthen rights protections and remedies.

The Open Society Initiative for Southern Africa (OSISA) is a growing African institution committed to deepening democracy, protecting human rights and enhancing good governance in southern Africa. OSISA's vision is to promote and sustain the ideals, values, institutions and practice of open society, with the aim of establishing a vibrant southern African society in which people, free from material and other deprivation, understand their rights and responsibilities and participate democratically in all spheres of life.

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OSISA
Open Society Initiative
for Southern Africa

Country Profiles Report

Southern Africa Disability Rights
and Law School Project

In 2010, the Open Society Initiative for Southern Africa (OSISA) – in partnership with Open Society Foundations' Disability Rights Initiative and the Open Society Foundation for South Africa – undertook a research project into disability rights in nine countries in southern Africa. This was a new area of work for OSISA and, while there was quite a bit of anecdotal evidence about the state of disability in the countries where OSISA works, a more comprehensive understanding of the state of disability in the region was needed. The research was undertaken over a period of eight months and the findings mostly make for depressing reading. The state of disability rights in the region is in a dire state.

OSISA's main objective was to have a comprehensive overview of the disability rights movement in southern Africa and to obtain detailed country specific research to enable the institution to assess where it could best provide on-going support. Therefore, two reports were commissioned – this compilation of detailed country reports and a more general overview. OSISA was also very interested in the provision of disability rights courses to law students in the region so the reports contain information that is specific to the work that universities were doing on disability rights. Unsurprisingly, the findings show that there was very little such work taking place.

People living with disabilities (PWD) are the most marginalised people in a region where life is already difficult for the majority of the population due to severe poverty, lack of development and high unemployment. In all countries, the rights of PWD are not given any priority by their governments. Usually, any ministry dealing with disability also has to address other marginalised groups such as women and children, so disability rights and the protection of PWD receive minimal state funding and focus. Most of the organisations and individuals interviewed during the research had to conduct their activities and advocacy work on an extremely tight budget – in most cases with little or no state support. In depth country interviews showed that the continued survival of disability rights organisations was one of their greatest challenges. Yet despite all the hardships faced by the disability community, remarkable work was taking place.

The premise upon which this study commenced is the knowledge that many PWD suffer some of the most profound human rights violations as a result of the denial of legal capacity, institutionalisation, and inadequate provision of community-based services and support. Only by ensuring their rights to (i) equal recognition before the law and legal capacity, (ii) equal access to the justice system, and (iii) live independently and be included in the community can these violations be addressed. While in some countries the disability movement is already taking on these issues – building on a developed rights discourse and a history of using legal tools and high-level advocacy to achieve results in this area – the challenge remains to ensure that these core priorities are relevant across the region, especially in places where the disability movement is not as developed and these rights have not been prioritised.

This study provides critical insights into the difficulties faced by PWD across the region as well as valuable information that OSISA and its OSF partners will utilise to support the protection and promotion of the rights of PWD in southern Africa.